

Notices

Regulatory Notices

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Disciplinary and Other FINRA Actions

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Auction Rate Securities

FINRA Grants Additional, Temporary Relief from the Net Capital, Reserve Formula, Non-purpose Loan, and Maintenance Margin Requirements Applicable to Credit Extended on Auction Rate Securities to Broker-Dealers That Agree to Buy Back Auction Rate Securities

Effective Date: November 4, 2008

Executive Summary

This *Notice* advises FINRA member firms that FINRA is granting additional, temporary relief from the net capital (SEA Rule 15c3-1), reserve formula (SEA Rule 15c3-3), non-purpose loan (Regulation T 220.6), and maintenance margin requirements (NASD Rule 2520(f)(8)(A) and NYSE Rule 431(f)(8)(A)) applicable to credit extended on auction rate securities (ARS) to broker-dealers who have agreed to implement buyback programs for auction rate securities. Terms of the relief are detailed in a letter to the SEC, included as Attachment A.

Questions concerning this *Notice* should be directed to:

- Yui Chan, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8426;
- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464;
- Rudolph Verra, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8811; or
- Steve Yannolo, Principal Credit Specialist, Credit Regulation, at (646) 315-8621.

November 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Margin Department
- Operations
- Senior Management

Key Topic(s)

- Auction Rate Securities
- Maintenance Margin Requirements
- Net Capital
- Reserve Formula

Referenced Rules & Notices

- Interpretive Letters dated April 11, 2008, and April 24, 2008
- NASD Rule 2520
- NYSE Rule 431
- Regulation T §§ 220.6
- Regulatory Notice 08-08
- SEA Rules 15c3-1 and 15c3-3

Background & Discussion

In March 2008, FINRA issued *Regulatory Notice 08-08*, which increased the margin requirements on auction rate securities (ARS), due to concerns about reduced liquidity in the market resulting from failed auctions in such securities.¹ Subsequent to *Notice 08-08*, FINRA granted temporary relief to member firms in order to provide liquidity to customers who owned auction rate preferred securities (ARPS), as detailed in letters to the Securities and Exchange Commission (SEC) dated April 11, 2008,² and April 24, 2008.³

Many broker-dealers have recently reached agreements with the SEC, FINRA and various state securities regulators that will require the broker-dealers to buy back the ARS from their customers. As a result, broker-dealers wanted to provide immediate liquidity to customers.

Based upon discussions with the staff of the SEC and staff of the Federal Reserve Board, FINRA is granting additional relief to those broker-dealers that have agreed to implement buyback programs for ARS. This relief will be available to member firms only with respect to the accounts of retail customers whose account assets do not exceed \$10 million, and to any accounts of charitable organizations.⁴

Any liquidity loans extended to such customers who ultimately do not agree to participate in the buyback offer for fixed income, non-equity ARS, will remain subject to the conditions outlined in FINRA *Notice 08-08* upon expiration of the buyback offer period. Any liquidity loans extended to retail customers who ultimately do not agree to participate in the buyback offer for ARPS will be subject to the conditions outlined in the April 11, 2008, and April 24, 2008, letters upon expiration of the buyback offer period.

Broker-dealers are reminded that they must report to FINRA, on a monthly basis, the aggregate dollar amount of credit extended to customers on all loans collateralized by ARPS.

Endnotes

- 1 See <http://www.finra.org/Industry/Regulation/Notices/2008/P038096>.
- 2 See www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p038317.pdf.
- 3 See www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p038387.pdf.
- 4 As defined in section 3(c)(10)(D)(iii) of the Investment Company Act of 1940.

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ATTACHMENT A

September 18, 2008

Mr. Michael A. Macchiaroli, Esq.
Associate Director
Securities and Exchange Commission
Division of Trading and Markets
100 F Street, NE
Washington, DC 20549

Dear Mike,

This letter is a follow-up to the various discussions that have recently taken place regarding a request to provide additional, temporary relief from the net capital (SEA Rule 15c3-1), reserve formula (SEA Rule 15c3-3), non-purpose loan (FRB Regulation T) and maintenance margin requirements (NYSE Rule 431 and NASD Rule 2520) applicable to credit extended on auction rate securities (ARS).

In March 2008, FINRA issued *Regulatory Notice 08-08*, which increased the margin requirements on ARS, due to concerns about reduced liquidity in the market resulting from failed auctions in such securities.¹ In the *Notice*, firms were advised that the maintenance margin requirement for fixed income based ARS was being increased to 25 percent and were reminded that the maintenance requirement on auction rate preferred securities (ARPS) was 100 percent, as they are not margin eligible under Regulation T.

In response to the *Notice*, the Securities Industry Financial Markets Association and representatives from broker-dealers expressed a need to provide liquidity to customers who owned ARPS, and as outlined in a letter to you dated April 11, 2008,² regulatory relief from the maintenance margin, net capital and reserve formula requirements was provided. The letter stated that, based on discussions with you, the SEC staff agreed that member firms would not be required to apply a charge to their net capital for any margin deficiencies resulting from non-purpose credit extended on ARPS, nor to exclude from the customer reserve formula computation such non-purpose loans to customers, provided that the firms met certain conditions specified in the letter. One of the conditions stipulated in the April 11 letter was that broker-dealers needed to obtain a bank loan equal to the aggregate amount of non-purpose loans made to customers. The bank loans can only be collateralized by the ARPS pledged by the customers, and the bank loans must have a remaining maturity term of no less than six months at the time such credit is extended.

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Subsequent to the April 11 letter, broker-dealers found it difficult to secure bank loans collateralized by ARPS, and therefore were not able to avail themselves of the relief that was provided in the letter. As a result, the terms stipulated in the April 11 letter were revised for those broker-dealers that could not obtain bank loans for the amount of credit extended to customers collateralized by ARPS, and such agreed upon terms were communicated to you in a letter dated April 24, 2008.³

In recent weeks, many broker-dealers have reached agreements with the SEC and various state securities regulators that will require the broker-dealers to repurchase the ARS from their customers. In some cases, these settlement agreements require that the broker-dealers provide immediate liquidity to such customers, in the form of unconditional, non-recourse loans against ARS holdings, prior to the actual buyback of such holdings. As a result, several broker-dealers have requested additional net capital and maintenance margin relief from the conditions stipulated in the April 24 letter. Member firms have represented that the buyback offer period for retail customers and charitable organizations may extend through January or February 2009, while the buyback offer periods for other customers may extend well into 2010.

Based upon these recent developments and discussions with you and your staff and staff of the FRB, it has been agreed that additional relief may be granted to those broker-dealers that have agreed to implement buyback programs for ARS. This relief will be available to member firms only with respect to the accounts of retail customers whose account assets do not exceed \$10 million, and to any accounts of charitable organizations.⁴

Based on our discussions, broker-dealers must satisfy the following conditions with respect to liquidity loans collateralized by ARS securities:

Liquidity loans collateralized by fixed income, non-equity auction rate securities shall be subject to the following conditions:

- The loans may be extended as “purpose credit” under Reg T 220.6(a) and in such cases, must be made in a separate Good Faith account;
- Broker-dealers may waive the collection of the 25 percent maintenance margin requirement, as imposed by FINRA *Regulatory Notice 08-08*, and extend loans up to 100 percent of the par value of such ARS in a Good Faith account. However, in lieu of collecting the required maintenance margin, broker-dealers must deduct from net capital 25 percent of the par value of such ARS;

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- Broker-dealers may include a debit item in their customer reserve formula computation, up to 75 percent of the aggregate credit extended through such liquidity loans collateralized by fixed income, non-equity, ARS.

Any liquidity loans extended to such customers who ultimately do not agree to participate in the buyback offer for fixed income, non-equity auction rate securities, will remain subject to the conditions outlined in FINRA *Regulatory Notice 08-08* upon expiration of the buyback offer period.

Liquidity loans collateralized by auction rate preferred securities (ARPS) shall be subject to the following conditions:

- The loans may only be extended as non-purpose credit, pursuant to Reg T 220.6(e) through a separate Good Faith account. Broker-dealers need not obtain a T-4 form or other statement from customers attesting to the purpose of the loan;
- Broker-dealers may waive the 100 percent maintenance margin requirement imposed on such securities by FINRA *Regulatory Notice 08-08* and extend loans up to 100 percent of the par value of such ARPS. However, broker-dealers must deduct from net capital 25 percent of the par value of such ARPS;
- The aggregate of all such non-purpose loans shall be considered as a scheduled capital withdrawal under NYSE Rule 326 and NASD Rule 3130, unless otherwise deducted in the computation of net capital;
- The aggregate amount of credit to be extended on such loans, including those loans subject to the April 11 or April 24 letters, must not exceed 50 percent of the broker-dealer's excess net capital, computed as of the most recent month end and adjusted for any subsequent material decrease at the time such credit is extended;
- The credit extended to customers on such liquidity loans shall not be included as a debit item in the firm's customer reserve formula computation.

Any liquidity loans extended to retail customers who ultimately do not agree to participate in the buyback offer for auction rate preferred securities will be subject to the conditions outlined in the April 11 and April 24 letters upon expiration of the buyback offer period.

Broker-dealers are reminded that they must report to FINRA, on a monthly basis, the aggregate dollar amount of credit extended to customers on all loans collateralized by ARPS.

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We understand that this relief will be temporary, is based solely on the conditions as represented herein, and will be reviewed in consultation with your office for amendment or reconsideration, if and as circumstances may warrant.

Very truly yours,
Rudolph Verra

cc: Scott Holz, Federal Reserve Board
Tom McGowen, SEC, Division of Trading and Markets
Bonnie Gauch, SEC, Division of Trading and Markets

- 1 See <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p038097.pdf>
- 2 See <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p038317.pdf>
- 3 See <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p038387.pdf>
- 4 As defined in section 3(c)(10)(D)(iii) of the Investment Company Act of 1940.

Retail Foreign Currency Exchange

FINRA Addresses Firms' Retail Foreign Currency Exchange Activities

Executive Summary

The retail over-the-counter foreign currency exchange (retail forex) market is opaque, volatile and risky. Broker-dealers who engage in forex business with their retail customers must comply with the FINRA rules that apply to those activities.

Questions regarding this *Notice* should be directed to Laura Gansler, Associate Vice President, Office of Emerging Regulatory Issues, at (202) 728-8275; or Susan DeMando, Associate Vice President, Member Regulation, at (202) 728-8411.

Background & Discussion

The primary forex market is the interbank market, in which large banks, financial institutions and other eligible participants trade currencies amongst themselves. In recent years, however, an electronic, secondary over-the-counter (OTC) market has developed. Retail customers participate in the secondary OTC market with retail dealers, albeit typically at different prices and with higher spreads than those that occur in the interbank market. Broker-dealers who participate in this retail market must comply with applicable FINRA rules.

In the retail market, customers trade currencies through spot, forward and swap transactions with forex dealers acting as counterparties. These transactions are quoted in pairs, with the first currency representing the base currency and the second currency representing the quote currency. The quoted price, or rate, is the amount of the quote currency required to purchase one unit of the base currency. For example, a quote for EUR/USD

November 2008

Notice Type

- Guidance

Suggested Routing

- Advertising
- Legal and Compliance
- Registered Representatives
- Senior Management

Key Topic(s)

- Anti-Money Laundering
- Communications with the Public
- Customer Protection Rule
- Foreign Currency Exchange
- Just and Equitable Principles of Trade
- Membership Rules
- Net Capital
- Over-the-Counter Market
- Retail Market

Referenced Rules & Notices

- 31 CFR 103.19(a) of the Bank Secrecy Act
- NASD Rule 1010(i)
- NASD Rule 1014(a)(3)
- NASD Rule 1017
- NASD Rule 2110
- NASD Rule 2210
- NASD Rule 3011(a)
- Section 15 of the Securities Exchange Act
- Securities Exchange Act Rule 15c3-1

expresses the price of the Euro in U.S. dollars. If a customer shorts the EUR/USD, then the customer will experience a loss if the Euro gains value relative to the U.S. dollar. A customer who is long the EUR/USD will experience a loss if the Euro loses value relative to the U.S. dollar.

Most retail trading occurs online through electronic platforms provided by the dealer, who acts as counterparty to the retail customer's trades and sets the execution price and the spread. The retail customer typically does not have pricing information and cannot determine whether the price quoted by the dealer is fair. Moreover, the dealer acts as counterparty and establishes the price, which means that the dealer has a conflict of interest in the transaction. Price comparisons are also complicated by different compensation structures: Some firms charge per-trade commissions, others impose wider spreads, and some do both. Other transaction costs can include account maintenance charges, software licensing fees and commissions paid to introducing brokers or other third-party service providers.

The currency market is extremely volatile and retail forex customers are exposed to substantial currency risk. Some currencies are significantly more volatile than others. Many forex dealers extend leverage to their customers at ratios of 400:1 or higher, which allows customers to control contracts worth significantly more than their cash investment. The high leverage ratios magnify even minor fluctuations in currency rates, exponentially increasing a customer's losses and gains. Even a small move against a customer's position can result in a significant loss. Unlike margin in a securities account, forex customers are typically closed out of their position once their loss exceeds their initial investment. However, if, for any reason, the position is not closed out at a zero balance, the customer could be liable for additional losses.

Customers also face counterparty risk, as there is no central clearing organization for forex transactions. Customers may not know where their funds will be held or by whom. They may also not know that, unlike securities, funds deposited into an account with a broker-dealer for investment in any currency, or which are the proceeds of the sale of a currency position, or any currency in an account with a broker-dealer, are not protected by the Securities Investor Protection Corporation (SIPC).

For all of these reasons, retail forex trading is risky, and the only funds that should be invested in the retail forex market are those that the investor can afford to lose. Nonetheless, retail interest in the market is growing, in part due to aggressive, and sometimes misleading, advertising that minimizes risks and exaggerates potential returns.

Under the Commodity Exchange Act (CEA), only certain regulated entities may act as counterparty to a retail forex transaction. The approved entities include Futures Commission Merchants (FCMs) registered with the Commodity Futures Trading Commission (CFTC), as well as banks, insurance companies, and registered broker-dealers. The CFTC and the National Futures Association (NFA) oversee the forex-related activities of registered FCMs. In May 2008, Congress amended the CEA to expand and clarify the CFTC's jurisdiction over the retail forex market. Among other things, the amendments:

- Require CFTC-regulated forex dealers to register with the NFA in the newly created capacity of Retail Foreign Exchange Dealers (RFEDs);
- Raise net capital requirements for RFEDs to \$10 million initially, and to \$20 million by May 2009; and
- Subject RFEDs to anti-fraud and certain other provisions of the CEA.

However, Congress did not extend these new net capital requirements or other provisions to registered broker-dealers or the other financial institutions that are not subject to CFTC oversight but that may act as counterparties in retail forex transactions. As a result, FINRA has seen an increase in membership applications from firms interested in conducting retail forex business. FINRA has also seen an increase in retail forex activities among current FINRA members, including broker-dealers acquired by forex dealers.

Applicability of FINRA Rules to Retail Forex Activities of Broker-Dealers

Just and Equitable Principles of Trade

NASD Rule 2110, which applies to every FINRA member, requires that firms, in the conduct of their business, observe high standards of commercial honor and just and equitable principles of trade. Rule 2110 applies to all of the business of a broker-dealer, not only to its securities and investment banking business. In determining appropriate standards and principles in the context of retail forex activity, FINRA will look to the forex-related rules and interpretations adopted by the NFA to govern the retail forex activities of its members. Therefore, in order to ensure compliance with Rule 2110, we expect broker-dealers to conduct their retail forex activities in a manner consistent with the regulatory requirements applicable to NFA members that are engaged in the same activities.

Under this standard, forex-related conduct that would constitute a violation of Rule 2110 includes, but is not limited to:

- Misappropriating or mishandling customer funds;
- Failing to disclose that the firm is acting as counterparty to a transaction;
- Failing to adequately disclose the risks associated with forex trading;
- Using, selling or leasing electronic trading platforms that allow “slippage” of trade executions in a manner that disproportionately or unfairly affects the customer;
- Manipulating or displaying false quotes;
- Offering mock, or “demonstration,” accounts that do not accurately reflect the risks of forex trading;
- Issuing to customers false reports or account statements that represent false profits or that conceal misappropriations or losses;
- Making post-execution price adjustments that are inappropriate and unfavorable to the customer;
- Creating false books and records;
- Failing to adequately disclose to customers the risks and terms of leveraged trading;
- Soliciting business for and introducing customers to a forex dealer without doing adequate due diligence about the forex dealer, or in a way that misleads the customer about the forex dealer or forex trading, including how customer funds will be held;
- Failing to conduct due diligence into any solicitors that introduce forex customers to the firm, and failing to supervise any unregistered solicitors that are employees or agents of the firm; and
- Accepting forex-related trades from an entity or individual that solicits retail forex business on behalf of the firm in a misleading or deceptive way.

Communications with the Public

NASD Rule 2210, applicable to all FINRA members, prohibits firms from making any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. Rule 2210 is not limited to a broker-dealer’s securities and investment banking business. A firm’s forex-related communications – whether the firm is acting as a dealer or is soliciting forex business for a dealer – must be fair and balanced and based on principles of fair dealing and good faith, and firms must provide a sound basis for evaluating the facts regarding both the forex market generally, as well as the customers’ specific transactions. These obligations may not be waived or met by disclaimer.

New FINRA member firms that engage in forex-related activities must file their advertisements with FINRA. Rule 2210 requires any firm that has not previously filed advertisements with FINRA to file all of its advertisements at least 10 days prior to first use; this filing requirement continues for one year from the first submission. Rule 2210's internal approval, filing requirements and recording-keeping provisions also apply to forex-related communications. The rule requires that a registered principal give written approval of all advertisements and sales literature prior to use.

Rule 2210 prohibits predictions or projections of performance, or the implication that past performance will recur. Communications used by firms in connection with retail forex activities may not tout future returns. The rule prohibits the omission of material facts or qualifications that would cause a communication to be misleading. Accordingly, firms' communications must adequately disclose the risks associated with forex trading, including the risks of highly leveraged trading. Firms must also make sure that their communications with the public are not misleading regarding, among other things:

- The likelihood of profits or the risks of forex trading, including leveraged trading;
- The firm's role in or compensation from the trade;
- The firm's or the customer's access to the interbank currency market; or
- The performance or accuracy of electronic trading platforms or software sold or licensed by or through the firm to customers in connection with forex trading, including falsely advertising claims regarding slippage rates.

FINRA also reminds firms that SIPC rules prohibit references to SIPC membership or protection in communications regarding commodities, including forex.

Membership Rules

In accordance with FINRA's membership application process, applicants must include a detailed description of their business plan that adequately and comprehensively describes all material aspects of their business activities, as well as the nature and source of the firm's capital. Applicants must be able to demonstrate their capacity to comport with the federal securities laws and FINRA's rules, and to observe high standards of commercial honor and just and equitable principles of trade. Applicants formerly registered with the CFTC should be aware that NASD Rule 1014(a)(3) lists a range of events, including disciplinary actions and customer claims, or any pending adjudicated or settled regulatory action or investigation by the CFTC, that FINRA considers when weighing whether an applicant can meet these standards.¹

Current FINRA member firms should also be aware that expansion into retail forex constitutes a material change in business operations under NASD Rule 1010(i). Therefore, before engaging in over-the-counter forex business, a firm must first file for and receive approval of change in business operations under NASD Rule 1017. Any such filing will be closely reviewed under the guidelines and standards set forth in this *Notice*.

Net Capital Calculations and Customer Protection Rule

Firm Investment in Forex

If a firm that must present its financials in U.S. dollars invests in forex, the currency must be converted to U.S. dollars as of the balance sheet date. Further, in computing its net capital, the firm must take a currency charge, the amount of which depends on the currency involved. The charge is not applied for firms with an off-setting liability payable in the same currency. In addition, other off-sets with respect to hedged transactions may be available.

Receivables Associated with Forex Transactions

Firms engaged in retail forex should review the requirements of Appendix B of Securities Exchange Act (SEA) Rule 15c3-1, governing net capital calculations for broker-dealers, to ensure the accuracy of their net capital computations. In general, when a customer or counterparty owes the broker-dealer money with respect to a forex transaction, the firm must treat the unsecured portion of the receivable as a non-allowable asset. Appendix B (a)(3)(xviii) of Rule 15c3-1 contains the conditions that must be met in order to consider the receivable secured, and therefore an allowable asset.

Rule 15c3-3 Reserve Formula Treatment

In accordance with SEC Release 34-9922, firms are required to include the net balance due to customers in non-regulated commodity accounts, reduced by any deposits of cash or securities with any clearing organization or clearing broker in connection with the open contracts in such accounts. This requirement would also apply to forex transactions.

Anti-Money Laundering

NASD Rule 3011(a) requires FINRA member firms to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions. Further, 31 CFR 103.19(a) of the Bank Secrecy Act requires broker-dealers to report suspicious transactions, as defined under the Rule, that are conducted or attempted by, at, or through their firm. FINRA member firms engaging in retail forex activities should ensure their Anti-Money Laundering Program addresses the risks associated with the business and includes procedures for monitoring, detecting, and reporting suspicious transactions associated with their retail forex activities.

Conclusion

FINRA is concerned about the rapid growth of the retail forex market generally, and about the retail forex activities of broker-dealers in particular. We expect firms to review and monitor their forex activities to ensure compliance with all applicable rules, and FINRA will look to the rules and interpretations issued by the NFA to govern its members' retail forex business as a basis for determining whether the same activities, when conducted by a broker-dealer, meet the high standards of commercial honor and principles of just and equitable trade required under FINRA's rules.

Endnotes

- 1 See, e.g., *FINRA Notice 04-10* (SEC Approves Amendments to Membership Application and Continuation Rules (Rules 1011, 1014, and 1017)).

Qualification Examination Waiver and Series 16 Experience Acceptability Requests

FINRA Announces Electronic Filing Process For Qualification Examination Waiver Requests and Series 16 Experience Acceptability Requests

Effective Date: January 16, 2009

Executive Summary

Effective January 16, 2009, member firms must submit all qualification examination waiver requests and Series 16 experience acceptability requests electronically through the FINRA Firm Gateway. This new process will replace the current paper-based submission format and, for Dual Member firms, the electronic submissions via the Electronic Filing Platform (EFP).

To facilitate the transition, beginning December 1, 2008, member firms may begin submitting qualification examination waiver requests and Series 16 experience acceptability requests electronically via the Firm Gateway. Member firms' Web CRD Primary Account Administrators will receive (or may apply for) entitlement privileges to give the firm's registration and/or compliance personnel the ability to file requests for qualification examination waivers and Series 16 experience acceptability through the Firm Gateway.

Questions concerning this *Notice* should be directed to Joe McDonald, Associate Director, Testing and Continuing Education Department, at (240) 386-5065.

November 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Registration
- Senior Management
- Technology

Key Topic(s)

- Electronic Filing Platform
- FINRA Firm Gateway
- Qualification Examination Waiver Requests
- Registration
- Series 16 Experience Acceptability Requests

Referenced Rules & Notices

- NYSE Rule 344
- NYSE Rule 345
- NASD Rule 1000 Series
- NASD Rule 1070(d)
- NASD Rule 9600 Series

Background & Discussion

Any person associated with a member firm who is engaged in the securities business of the firm must register with FINRA. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. NASD Rules and Incorporated NYSE Rules set forth the registration and qualification requirements for FINRA firms.¹

Examination Waiver Requests

The NASD Rule 1000 Series specifies, among other things, registration and qualification requirements for registered representatives and principals associated with firms. NASD Rule 1070(d) authorizes FINRA, pursuant to the NASD Rule 9600 Series,² in exceptional cases and where good cause is shown, to waive qualification examinations (as specified in the NASD Rule 1000 Series) and accept other standards as evidence of an applicant's qualification for registration.³

With respect to Dual Members, Incorporated NYSE Rule 345 (and its Interpretation) also specifies certain registration and qualification requirements applicable to such members. Similar to NASD Rule 1070(d), Incorporated NYSE Rule 345.15 authorizes FINRA to waive the examination requirement for a candidate for registration, where good cause is shown. While FINRA generally considers requests for examination waivers by Dual Members pursuant to NASD Rule 1070(d), FINRA applies Incorporated NYSE Rule 345.15 when considering requests by Dual Members for waivers of examinations not specified by NASD Rules.⁴

Series 16 Experience Acceptability Requests

Incorporated NYSE Rule 344 (and its Interpretation) requires candidates for the registration category of "supervisory analyst" to take and pass the Series 16 examination and present evidence of three years of appropriate experience, as described in Incorporated NYSE Rule 344.11 and Interpretation 344/03. Currently, firms submit Series 16 experience acceptability requests to FINRA on behalf of "supervisory analyst" candidates to provide evidence of such experience.

New Electronic Filing Process Through FINRA Firm Gateway

Before the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York Stock Exchange into FINRA, NASD member firms into FINRA, NASD member firms submitted examination waiver requests on behalf of an applicant through a paper-based process, by sending a letter to NASD.⁵ NYSE member firms submitted examination waiver requests and Series 16 experience acceptability requests via the NYSE's EFP system. Since the consolidation, most examination waiver requests by FINRA member firms (including Dual Members)

have been submitted to FINRA through the paper-based process. However, Dual Members have continued to submit certain requests (*i.e.*, Series 7A, Series 14, Series 14A, Series 21 and Series 25 waivers and Series 16 experience acceptability requests) through the EFP.

Effective January 16, 2009, FINRA will require that member firms submit all requests for qualification examination waivers and Series 16 experience acceptability requests through the Firm Gateway,⁶ a tool that provides consolidated access to FINRA regulatory and filing applications.

To facilitate the transition to the Firm Gateway process, beginning December 1, 2008, FINRA will begin accepting electronic examination waiver and Series 16 experience acceptability requests via the Firm Gateway at <https://firms.finra.org/examwaivers>. Firms will use one online form to submit examination waiver requests and a second online form to request Series 16 experience acceptability. The new process will replace both the paper-based submission process and the EFP system.

For all examination waiver requests and Series 16 experience acceptability requests, firms must submit a Uniform Application for Securities Industry Registration or Transfer (Form U4) electronically via the Central Registration Depository (CRD[®]) system at least **one business day** prior to submitting such requests via the Firm Gateway. The Form U4 must request an open examination window for each examination requested waived and each Series 16 experience acceptability request.

The new process will require the same information currently required for qualification examination waivers and Series 16 experience acceptability submissions, and will allow firms to attach supporting documentation to such requests.

For qualification examination waiver requests, the member firm must provide:

- a. Applicant's CRD Number;
- b. Qualification examination(s) for which the waiver is being requested;
- c. Reason for the waiver request; and
- d. Documentation supporting the waiver request.

For Series 16 experience acceptability requests, the member firm must provide:

- a. Applicant's CRD Number;
- b. Statement on applicant's experience;
- c. Whether applicant is a Chartered Financial Analyst; and
- d. Whether applicant intends to take Part 1, Part 2 or both parts of the Series 16 examination.

FINRA will continue to convey decisions on waiver requests to firms in writing, along with a courtesy telephone call.

Entitlements

By December 1, 2008, each firm's primary account administrator for Web CRD will be automatically granted waiver submission entitlement privileges. Account administrators that do not have entitlement privileges can request them by submitting a FINRA Account Administrator Entitlement Form (AAEF) for Web CRD (see www.finra.org/entitlements). Account administrators may give entitlement privileges to individuals in their organizations who require access to the waiver and Series 16 experience acceptability forms by setting privileges for them through the FINRA Entitlement Account Management Tool. If a member firm employee requires access to the waiver and Series 16 experience acceptability forms but does not know his or her firm's account administrator(s), the employee can call FINRA's Gateway Call Center at (301) 869-6699 to find out the name of the firm's account administrator(s).

Two types of entitlement privileges may be granted: (1) Create/Submit and (2) Manager. A user with the Create/Submit privilege will be able to complete and submit examination waiver and Series 16 experience acceptability requests. A Manager will be able to complete and submit examination waiver and Series 16 experience acceptability requests and, in addition, view waiver and Series 16 experience acceptability requests submitted by other users within the firm.

Transition Schedule

The transition of all examination waiver and Series 16 experience acceptability requests to Firm Gateway will occur as follows:

- ▶ **December 1, 2008** – Firms can begin to submit waiver and Series 16 experience acceptability requests through Firm Gateway.
- ▶ **December 19, 2008** – Last day for Dual Member firms to submit waiver and Series 16 experience acceptability requests through EFP.
- ▶ **January 15, 2009** – Last day to submit paper-based waiver and Series 16 experience acceptability requests.
- ▶ **January 16, 2009** – All examination waiver and Series 16 experience acceptability requests must be made through the Firm Gateway.

Endnotes

- 1 The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules), together referred to as the Transitional Rulebook. While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). For more information about the rulebook consolidation process, see *FINRA Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 The SEC recently approved the adoption of new FINRA Rules, including the adoption of the NASD Rule 9600 Series as the FINRA Rule 9600 Series without substantive change. See Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-26; SR-FINRA-2008-028 and SR-FINRA-2008-029). The FINRA Rule 9600 Series will take effect on December 15, 2008. See *Regulatory Notice 08-57* (October 2008).
- 3 The NASD Rule 9600 Series also sets forth an appeal process for denials of waiver requests submitted pursuant to NASD Rule 1070.
- 4 Specifically, FINRA considers requests for waivers of the Series 7A, Series 14, Series 14A, Series 21 and Series 25 examinations pursuant to Incorporated NYSE Rule 345.15. The procedures set forth in the NASD Rule 9600 Series, including applicable appeal processes, do not apply to waivers considered pursuant to the Incorporated NYSE Rules.
- 5 FINRA provides guidelines on the qualification examination waiver process on its Web site. For FINRA's Qualification Examination Waiver Guidelines, see www.finra.org/brokerqualifications/waiverguidelines.
- 6 NASD Rule 3170 provides that each member shall be required to file with FINRA, or otherwise submit to FINRA, in such electronic format as FINRA may require, all regulatory notices or other documents required to be filed or otherwise submitted to FINRA, as specified by FINRA.

Circulation of Rumors

FINRA Requests Comment on Proposed FINRA Rule Addressing the Circulation of Rumors

Comment Period Expires: December 18, 2008

Executive Summary

As part of the process of developing a new, consolidated rulebook (the Consolidated FINRA Rulebook), FINRA is requesting comment on a proposed FINRA Rule relating to the circulation of rumors. The proposed rule is based on FINRA Rule 6140 and Incorporated NYSE Rule 435(5).¹

Questions concerning this *Notice* should be directed to Brant Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by December 18, 2008.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

November 2008

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topic(s)

- Circulation of Rumors

Referenced Rules & Notices

- FINRA Rule 6140
- NASD Rule 5120
- Incorporated NYSE Rule 435(5)

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.²

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.³

Background & Discussion

Proposal

FINRA is proposing Rule 2030, a new, stand-alone rule, that combines aspects of Incorporated NYSE Rule 435(5) and FINRA Rule 6140(e) and that extends the prohibition on the origination or circulation of rumors to cover all securities.⁴ FINRA is proposing to replace Rule 6140(e) and Incorporated NYSE Rule 435(5), as well as the Interpretation to Incorporated NYSE Rule 435(5), with the following:

Rule 2030. Circulation of Rumors

No member shall originate or circulate in any manner a rumor concerning any security which the member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security. A member must promptly report to FINRA any circumstance which reasonably would lead the member to believe that any such rumor might have been originated or circulated.

The proposed rule includes standards and obligations derived from both existing rules. Aspects of the proposed rule are described more fully below.

- ▶ **Use of the term “rumor.”** As noted above, although Rule 6140(e) does not use the term “rumor,” Incorporated NYSE Rule 435(5) specifically refers to the circulation of “rumors.” FINRA is proposing to adopt this term into Rule 2030 without the qualification in Incorporated NYSE Rule 435(5) that the rumor be “of a sensational character” and “reasonably be expected to affect market conditions on the Exchange.” Instead, FINRA is proposing to maintain the standard in Rule 6140 that the member know or have reasonable grounds for believing that the rumor is “false or misleading or would improperly influence the market price of such security.”

- **Scope of the proposed rule.** FINRA is proposing that Rule 2030 apply to all securities, not just those securities reported to the Consolidated Tape. The genesis of Rule 6140 was related to the creation and maintenance of the integrity of the information on the Consolidated Tape, but the conduct addressed in the rule was also subject to the antifraud and antimanipulation provisions of the federal securities laws.⁵ It is FINRA's view that the origination and circulation of rumors present the same risks to the integrity of the market regardless of whether the security is listed on a national securities exchange or trades solely over the counter. Consequently, FINRA is proposing that Rule 2030 apply to all securities.
- **Reporting requirement.** FINRA is proposing that Rule 2030 include a reporting requirement similar to the reporting requirement in Incorporated NYSE Rule 435(5). The proposed reporting requirement would require firms to report promptly to FINRA any circumstance which reasonably would lead the firm to believe that any rumor covered by the rule might have been originated or circulated. Incorporated NYSE Rule 435(5) includes a reporting provision with respect to securities traded on the NYSE; Rule 6140(e) does not have a reporting provision. FINRA is proposing to include a reporting provision in the new rule; in keeping with Rule 2030's broader reach to all securities, the reporting requirement would similarly be extended to cover all securities.
- **Unsubstantiated information published by a widely circulated public media.** Incorporated NYSE Rule 435(5) includes an exception from the rule for discussions of "unsubstantiated information published by a widely circulated public media" provided that the source of the information and its unsubstantiated nature are disclosed. Rule 6140(e) does not include this exception. FINRA is not proposing to include the exception in Rule 2030. It is not clear that widely circulated rumors in the public media, that would otherwise be covered by the rule, are of less concern in terms of the market integrity concerns related to such rumors.

Request for Comment

In connection with the proposal, FINRA is requesting comment on certain aspects of proposed Rule 2030. Specifically, FINRA is requesting comment on the following:

- As noted above, FINRA is proposing that Rule 2030 retain the standard in Rule 6140(e) that a rumor not be originated or circulated if the member knows or has reasonable grounds for believing that the rumor is "false or misleading or would improperly influence the market price of such security." Should FINRA continue to use this standard in applying the rule? If not, what standard is appropriate? Should Rule 2030 include the requirement that the rumor be "of a sensational character," as is currently required under Incorporated NYSE Rule 435(5)?

- Does the proposed text of Rule 2030 strike the right balance between the existing rule text in Rule 6140(e) and Incorporated NYSE Rule 435(5)? Are there provisions in either rule that FINRA is proposing to retain that should be removed or revised? Should Rule 2030 include an exception for unsubstantiated information published by a widely circulated public media provided that the source of the information and its unsubstantiated nature are disclosed? Are there other provisions in either rule that FINRA is proposing to delete that should be retained?
- Should Rule 2030 provide greater emphasis on firms' policies and procedures regarding the circulation of rumors? If so, how specific should any such provisions be? What should be required?

In addition to the specific questions listed above, FINRA is also interested in any other issues that commenters may wish to address relating to the proposal.

Endnotes

- 1 The current FINRA rulebook includes, (1) NASD Rules; and (2) rules incorporated from NYSE (Incorporated NYSE Rules). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules will apply to all member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *FINRA Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 4 The SEC recently approved the adoption of NASD Rule 5120 as FINRA Rule 6140, without substantive change, effective December 15, 2008. See *Regulatory Notice 08-57* (October 2008). Although NASD Rule 5120 remains in effect until December 15, 2008, references in this *Notice* are to new FINRA Rule 6140.
- 5 See *NASD Notice to Members 75-42* (June 10, 1975); *NASD Notice to Members 74-52* (December 20, 1974).

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Fair and Accurate Credit Transactions Act of 2003

Alert to Member Firms About the Federal Trade Commission's FACT Act Regulations and the Announcement of the FTC's Decision to Delay Enforcement of the Red Flags Rule until May 1, 2009

Executive Summary

FINRA is issuing this *Notice* to alert member firms about the Federal Trade Commission's (FTC's) Fair and Accurate Credit Transactions Act of 2003 (FACT Act) regulations and the FTC's decision to delay enforcement of the Red Flags Rule until **May 1, 2009**, to give member firms additional time to develop and implement their procedures. By that date, member firms subject to these regulations must have in place a written program to identify, detect and respond to patterns, practices or specific activities that could indicate identity theft.

The mandatory compliance date for the other FTC regulations approved at the same time as the Red Flags Rule remains **November 1, 2008**. Those regulations require any member firms that issue credit or debit cards to have reasonable policies and procedures to assess the validity of change-of-address notifications. Also, member firms that use consumer reports must develop reasonable policies and procedures to respond to the receipt of a consumer reporting agency's notice of address discrepancy. This *Notice* describes these FTC rules. Member firms are reminded that these are not FINRA Rules, and except as noted below, questions concerning these rules should be directed to the FTC.

To view the *Federal Register* notice of the FACT Act Regulations go to www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf.

November 2008

Notice Type

- Guidance
- Special Alert

Suggested Routing

- Compliance
- Internal Audit
- Legal
- Operations
- Senior Management
- Systems
- Training

Key Topics

- Changes of Address
- Consumer Reports
- Covered Accounts
- Creditors
- FACT Act
- Financial Institutions
- Identity Theft
- Notice of Address Discrepancy
- Privacy
- Red Flags
- Transaction Accounts

Background & Discussion

The Federal Trade Commission (FTC) and the federal banking regulators have issued joint regulations¹ implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).² As discussed in greater detail below, the FTC's regulations, which apply to most member firms, require that:

- ▶ Each financial institution or creditor develop and implement a written program to detect, prevent and mitigate identity theft in connection with the opening of certain accounts or the maintenance of certain existing accounts (referred to as the Red Flags Rule);
- ▶ Each credit and debit card issuer assess the validity of change-of-address notifications; and
- ▶ Each user of consumer reports develop reasonable policies and procedures to respond to the receipt of a consumer reporting agency's notice of a consumer address discrepancy.

Member firms should understand that the purpose of this Notice is informational only. Its purpose is solely to inform member firms about federal regulations, which FINRA has neither engaged in rulemaking nor has the authority to interpret. Nevertheless, given the importance and possible application of these regulations to member firms, FINRA believes it is important to provide this Notice in addition to what has been published in the Federal Register. Member firms should not rely on this Notice as a substitute for their understanding and application of these regulations and should seek their own counsel to address any issues under these regulations. As noted at the conclusion of this Notice, the FTC has indicated its willingness to work with FINRA in addressing industry-wide questions pertaining to the application of these provisions to member firms.

A. Red Flags Rule

The FTC's Red Flags Rule requires a member firm that is a "financial institution" or "creditor" offering or maintaining "covered accounts" to develop, implement and administer a Written Identity Theft Prevention Program (Program) to detect, prevent and mitigate identity theft in connection with the opening of a covered account or the maintenance of any existing covered account. The Red Flags Rule also requires every member firm that is a financial institution or creditor (even those that have initially determined that they do not need to have a Program) to periodically reassess whether it offers or maintains covered accounts that would require it to have in place a written Program.

1. Determining the Applicability of the Red Flags Rule to Member Firms

There are several key definitions to determine whether the Red Flags Rule applies to a member firm. Specifically, the Red Flags Rule applies to a “financial institution” or “creditor.” As a threshold matter, the member firm must first determine whether it is a financial institution or creditor. The term “financial institution” means a depository institution or any other person that, directly or indirectly, holds a transaction account belonging to a consumer.³ The term “transaction account” means an account that permits the account holder to make withdrawals for payment or transfer to third parties of securities or funds via telephone transfers, check, debit card or other similar items.⁴ The term “consumer” as used in the definition of financial institution reaches only individuals.⁵ As a result, a member firm without any individuals as clients would not be deemed to be a financial institution.

The term “creditor” means any person who regularly extends, renews, or continues credit or regularly arranges for the extension, renewal or continuation of credit.⁶ Therefore, if a member firm, acting as either an introducing or clearing firm, provides a customer with margin – a form of credit – it will be deemed to be a creditor for purposes of the Red Flags Rule. A member firm also will be deemed to be a creditor if it extends credit, or arranges to extend credit, to any of its customers in any other context, such as, arranging loans. A member firm that is not considered a financial institution because it has only institutional customers could still be a creditor if it extends credit, or arranges to extend credit, for any of its customers.

Once a member firm determines that it is either a financial institution or creditor, it must then analyze whether it has “covered accounts.” The term “covered accounts” is defined as (1) an account offered or maintained primarily for personal, family or household purposes that is designed to permit multiple payments or transactions; or (2) any other account for which there is a reasonably foreseeable risk to customers or safety and soundness of the member firm from identity theft, including financial, operational, compliance, reputation or litigation risks.⁷

Each member firm that is a financial institution or creditor should carefully analyze its customers and accounts to determine the extent to which it must comply with the FTC’s Red Flags Rule.⁸ While the definition of “covered accounts” in clause (1) generally applies only to retail accounts, the alternative definition in clause (2) would include any type of account (including institutional accounts) if the member firm determines that those accounts pose a reasonably foreseeable risk to its customers or to its own safety or soundness from identity theft.

Member firms should also be aware that a firm that determines it is not a financial institution or creditor for purposes of the FTC's regulations should consider having procedures in place to reassess that determination if there is a change in business operations, such as a change of business model or the offering of a new business line or product.

2. *Development and Implementation of the Program; Consideration of Guidelines*

A member firm subject to the Red Flags Rule as discussed above, must develop and implement a Written Identity Theft Program that is appropriate to that firm's size and complexity and the nature and scope of its business. At a minimum, the Program must include reasonable policies and procedures to:

- ▶ Identify relevant red flags for the covered accounts that the member firm offers or maintains and incorporate those red flags into its Program;
- ▶ Detect red flags that have been incorporated into the Program;
- ▶ Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
- ▶ Ensure the Program (including the red flags determined to be relevant) is updated periodically to reflect changes in risks to customers and to the safety and soundness of the member firm from identity theft.⁹

A member firm that is required to implement a Program must also consider the Interagency Guidelines on Identity Theft Detection, Prevention and Mitigation (Guidelines) and include in its Program those guidelines that are appropriate.¹⁰ These guidelines are intended to assist financial institutions and creditors in formulating and maintaining a Program. In addition, member firms should review, and implement where appropriate, the supplement to the Guidelines, which contains 26 illustrative examples of red flags.¹¹ Member firms already may be engaged in detecting some red flags through their requisite anti-fraud and anti-money laundering procedures. Accordingly, a member firm may consider whether such procedures can be adapted, to the extent appropriate, into its Program.¹²

3. *Administration of the Program*

A member firm that is required to develop and implement a Program must provide for its continued administration¹³ and must:

- Obtain approval of the initial written Program from either its board of directors, an appropriate committee thereof, or (if there is no board of directors) a designated employee at the level of senior management;
- Involve the board of directors, an appropriate committee thereof or a designated employee at the level of senior management in the oversight, development implementation and administration of the Program;
- Train staff, as necessary, to effectively implement the Program; and
- Exercise appropriate and effective oversight of service provider arrangements.¹⁴

Member firms should also be aware of their obligations with respect to third-party service providers. Specifically, whenever a member firm engages a service provider to perform an activity to which the requirements of the Program would apply if the firm itself was performing the activity, the member firm must ensure that the service provider's activity is conducted in accordance with reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft.¹⁵ For example, a member firm could contractually require the service provider to have policies and procedures to detect relevant red flags that may arise in the performance of its activities and either report the red flags to the member firm or to take appropriate steps to prevent or mitigate identity theft.¹⁶

4. *Periodic Identification of Covered Accounts*

Member firms that are financial institutions or creditors under the Red Flags Rule must periodically determine whether they offer or maintain covered accounts.¹⁷ Further, as a part of this determination, the member firm must conduct a risk assessment to determine whether it offers or maintains covered accounts for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the member firm from identity theft, taking into consideration:

- The methods it provides to open its accounts;
- The methods it provides to access its accounts; and
- Its previous experiences with identity theft.¹⁸

B. Special Rules for Card Issuers

The FTC also issued rules that require any member firm considered to be a financial institution or creditor, as defined above, that issues credit or debit cards to have reasonable policies and procedures to assess the validity of any address change notifications the member firm receives.¹⁹ Specifically, a member firm that receives an address change notification and, within at least 30 days, a request for an additional or replacement card, may not issue an additional or replacement card until it has either:

- ▶ Notified the cardholder of the request at the cardholder's former address or via any other means of communication that the member firm and the cardholder have previously agreed to use, and provided the cardholder with a reasonable means of promptly reporting incorrect address changes; or
- ▶ Otherwise assessed the validity of the change of address in accordance with the policies and procedures established in its Program.²⁰

A member firm's notice to the cardholder, regardless of whether it is in either written or electronic form, must be clear and conspicuous and be provided separately from the member firm's regular correspondence with the cardholder.²¹

A member firm may also comply with these validation requirements if it validates an address using the methods described above before it receives a request for an additional or replacement card.²²

C. Special Rules for Users of Consumer Reports

The FTC also has issued rules requiring any member firm requesting a consumer report on an individual from a consumer reporting agency (CRA) to develop reasonable policies and procedures to use if it receives a notice of address discrepancy²³ from the CRA. The policies and procedures should be designed to enable the member firm to form a reasonable belief that it has the correct consumer report.²⁴ This obligation exists regardless of whether the member firm receives the notice of address discrepancy for a consumer report requested in connection with the opening of an account or in other circumstances in which the member firm already has a relationship with the consumer, such as when the customer applies for margin privileges for an existing account.²⁵ Therefore, if a member firm requests a consumer report about a new or existing customer and receives a notice of address discrepancy, the member firm must be able to form a reasonable belief that the consumer report actually relates to the customer in question.

The FTC's rules provide examples of reasonable policies and procedures member firms can use to form a reasonable belief about the identity of the customer. One method would be to verify the information in the consumer report directly with the customer.²⁶ Alternatively, a member firm could compare the information in the consumer report with:

- Information obtained and used to verify the individual's identity in accordance with the requirements of the member firm's Customer Information Program (CIP);²⁷
- Information maintained in its own records, such as applications, change-of-address notifications, other customer account records or retained CIP documentation; or
- Information obtained from third-party sources.²⁸

Generally, a member firm should use its CIP information to form a reasonable belief about an individual's identity only in connection with an account opening. However, if the member firm has received a notice of address discrepancy regarding a consumer report about an existing customer and the member firm has already met its CIP obligations, the member firm should use the other examples listed above (*e.g.*, verifying the information directly with the customer, information obtained from third-party sources, etc.) to form its reasonable belief that the consumer report is about the correct individual.²⁹

If a member firm cannot establish a reasonable belief that it has received the correct consumer report, the member firm should not use that report.³⁰ A member firm should be aware that other laws may also apply to a situation where it has received an incorrect consumer report. For example, in the case of account openings, if the member firm cannot establish a reasonable belief that it knows the true identity of the customer, it will need to follow its CIP obligations, which may involve not opening the account.³¹ Additionally, a notice of address discrepancy may be a red flag and require an appropriate response under the member firm's Written Identity Theft Prevention Program.³²

Finally, a member firm must furnish a consumer's address that it has reasonably confirmed is accurate to the CRA from which it received a notice of address discrepancy when the member firm:

- Can form a reasonable belief that the consumer report relates to the individual about whom the member firm requested the report;
- Establishes a continuing relationship with the customer; and
- Regularly and in the ordinary course of business furnishes information to the CRA.³³

A member firm may reasonably confirm an address is correct by:

- Verifying the address with the customer;
- Reviewing its own records to verify the address of the customer;
- Verifying the address through a third-party; or
- Using other reasonable means.³⁴

Future Interpretive Guidance

As previously noted, this *Notice* describes rules of the Federal Trade Commission, and the FTC is responsible for interpreting and applying these rules. Nevertheless, the FTC has indicated a willingness to work with FINRA to resolve on a consistent and industry-wide basis, interpretive questions that arise under these rules as applied to broker-dealers. Accordingly, FINRA invites member firms to contact FINRA's Office of General Counsel at (202)728-8071 with any questions regarding the regulations that pose significant interpretive challenges. Questions about compliance with the FACT Act Rules generally should be directed to the FTC.

Mandatory Compliance Date

Full compliance with the FTC's regulations was originally required by November 1, 2008. However, during the course of the FTC's education and outreach efforts following publication of the regulations, the FTC learned that some industries and entities within the FTC's jurisdiction were confused and uncertain about their coverage under the rule, especially the Red Flags Rule. Many entities also noted that because they generally are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the rulemaking, and therefore learned of the requirements of the rule too late to be able to comply by November 1, 2008. Given this confusion and uncertainty, the FTC has delayed the enforcement of the Red Flags Rule until **May 1, 2009**, to allow these entities to develop and implement their programs.

Endnotes

- 1 See Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 FR 63718 (November 9, 2007) (Joint Final Rules and Guidelines of the FTC, Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA)).
- 2 See Pub. L. 108-159 (amending Section 615 of the Fair Credit Reporting Act of 1970 (FCRA) and adding new Section 605(h)(2)).
- 3 The term “financial institution” is specifically defined as “a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account . . . belonging to a consumer.” 16 CFR 681.2(b)(7); 15 U.S.C. 1681a(t).
- 4 A “transaction account” is specifically defined as “a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.” 12 U.S.C. 461(b)(1)(C).
- 5 15 U.S.C. 1681a(c).
- 6 The term “creditor” specifically means “any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.” See 16 CFR 681.2(b)(5); 15 U.S.C. 1681a(r)(5); and 15 U.S.C. 1691a(e).
- 7 The term “covered account” specifically means:
 - (i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and
 - (ii) any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputational, or litigation risk.
 16 CFR 681.2(b)(3).
- 8 Member firms, are reminded that the just and equitable principles of trade underpinning NASD Rule 2110 prohibit conduct that, to any degree, is illegal under any applicable law. Accordingly, a member firm subject to the FTC’s Red Flags Rule that does not comply with the Red Flags Rule will be considered to have violated NASD Rule 2110.

Endnotes (cont'd)

- 9 16 CFR 681.2(d)(2)(i)-(iv).
- 10 16 CFR 681.2(f).
- 11 *See supra* note 2 at 63773-63774 (Appendix A to Part 681 – Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation and Supplement A to Appendix A).
- 12 *See supra* note 2 at 63728.
- 13 16 CFR 681.2(e).
- 14 16 CFR 681.2(e)(1)-(4).
- 15 16 CFR 681.2(e)(4).
- 16 *See supra* note 2 at 63773-74.
- 17 16 CFR 681.2(c).
- 18 16 CFR 681.2(c)(1)-(3).
- 19 16 CFR 681.3.
- 20 16 CFR 681.3(c).
- 21 16 CFR 681.3(e).
- 22 16 CFR 681.3(d).
- 23 A “notice of address discrepancy” means “a notice sent to a user by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.” 16 CFR 681.1(b).
- 24 16 CFR 681.1(c)(1).
- 25 *See supra* note 2 at 63736 (it is important for a user to form a reasonable belief that the consumer report relates to the consumer about whom it has requested the report both in the connection with the opening of an account and in other circumstances when the user already has a relationship with the consumer, such as when the consumer applies for an increased credit line).
- 26 16 CFR 681.1(c)(2)(ii).
- 27 31 CFR 103.121.
- 28 16 CFR 681.1(c)(2)(i)(A)-(C).
- 29 *See supra* note 2 at 63737.
- 30 *See id.*
- 31 *See supra* note 2 at 63737; *see also* 31 CFR 103.121(b)(2)(iii).
- 32 *See supra* note 2 at 683737.
- 33 16 CFR 681.1(d)(1).
- 34 16 CFR 681.1(d)(2)(i)-(iv).

FINRA Investigations

FINRA Provides Guidance Regarding Credit for Extraordinary Cooperation

Executive Summary

FINRA is issuing this guidance to apprise firms of the circumstances in which extraordinary cooperation by a firm or individual may directly influence the outcome of an investigation. The types of extraordinary cooperation by a firm or individual that could result in credit can be categorized as follows: (1) self-reporting before regulators are aware of the issue; (2) extraordinary steps to correct deficient procedures and systems; (3) extraordinary remediation to customers; and (4) providing substantial assistance to FINRA's investigation. These steps alone or taken together can be viewed in a particular case as extraordinary cooperation and, depending on the facts and circumstances, can have an impact on FINRA's enforcement decisions.¹

Questions regarding this *Notice*, should be directed to Susan Merrill, Executive Vice President, Enforcement, at (646) 315-7300.

Background & Discussion

The cornerstone of the investigative and enforcement authority of self-regulatory organizations in the securities industry is the requirement that firms and individuals employed in the industry comply with regulatory requests for information or testimony.² Notwithstanding this obligation, in certain situations, actions taken by firms or individuals go far beyond such compliance and rise to the level of extraordinary cooperation. Depending on the facts and circumstances, there are instances where cooperation by a firm or individual is so extraordinary that it should be taken into consideration in determining the appropriate regulatory response.

November 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Internal Audit
- Legal

Key Topics

- Investigations
- Self-reporting

Referenced Rules and Notices

- NASD Rule 3070(a)
- NASD Rule 8210
- NYSE Rule 351(a)
- NYSE Information Memorandum 05-65

There is significant regulatory value in crediting conduct that rises to the level of extraordinary cooperation.³ Such cooperation may put the regulator on notice of regulatory problems before it finds them during an examination or investigation or assist the regulator in resolving matters more quickly, thereby allowing it to deploy regulatory resources more efficiently. This enables FINRA to achieve its mission of investor protection and market integrity more effectively.

Credit for extraordinary cooperation in FINRA matters may be reflected in a variety of ways, including a reduction in the fine imposed, eliminating the need for or otherwise limiting an undertaking, and including language in the settlement document and press release that notes the cooperation and its positive effect on the final settlement by FINRA Enforcement. In an unusual case, depending on the facts and circumstances involved, the level of extraordinary cooperation could lead FINRA to determine to take no disciplinary action at all.

By publishing these standards of cooperation, FINRA seeks to increase transparency as to the basis for sanctions imposed in cases and to encourage firms to root out, correct and remediate violative behavior. By making clear that FINRA has given credit for extraordinary cooperation in a particular case, FINRA will inform firms and associated persons of the types of conduct considered and the degree to which such actions are to the individual or firm's benefit.

It is important to note that the level of cooperation is just one factor to be considered in determining the appropriate disciplinary action and sanctions. Other factors include the nature of the conduct, the extent of customer harm, the duration of the misconduct, and the existence of prior disciplinary history, all of which impact the appropriate sanction in any particular matter.

FINRA will consider the following factors in assessing cooperation:

1. Self-Reporting of Violations

FINRA will consider credit for self-reporting of violations before any regulatory inquiry into the conduct at issue has begun and before the violation otherwise comes to the regulator's attention. The self-reporting must be prompt, detailed, complete and straightforward in order to warrant special consideration. The type of reporting that is contemplated here is beyond that which is otherwise required to be reported pursuant to regulatory reporting requirements.⁴

2. Extraordinary Steps to Correct Deficient Procedures and Systems

FINRA may credit correction of procedures that occurs prior to detection by FINRA and, in appropriate circumstances, even after detection by FINRA. In order to encourage firms to take immediate, proactive steps to correct systems, procedures and controls that may have contributed to problems that occurred at the firm, FINRA considers it appropriate to credit such steps in reaching its decision regarding the appropriate regulatory response.

Credit for correction of procedures prior to regulatory detection is consistent with the FINRA Sanction Guidelines and cases that FINRA has recently brought. Firms that have found a problem and fully corrected related procedures before the examination or investigation began have received credit in the form of a reduction of the sanction imposed in the disciplinary action.

Credit for remediation of procedures post-detection by FINRA would be appropriately limited to those situations where, notwithstanding the fact that the firm did not discover the problem on its own, the firm nevertheless promptly and completely remediated the deficient procedures as soon as it became aware of the problem without prompting by FINRA or another regulator or law enforcement agency.⁵ To qualify for credit for extraordinary cooperation, the post-detection remediation must be taken early on, well before completion of FINRA's investigation. Steps taken later in the investigation to correct procedures will not be considered extraordinary steps and would not yield credit in the sanction determination, because a firm has a duty to correct deficient procedures.⁶

3. Extraordinary Remediation to Customers

FINRA recognizes that credit should be given for extraordinary steps taken to remediate customers, including promptly and immediately identifying injured customers and making such investors whole.⁷ FINRA also will consider the extent to which a firm proactively identifies and provides restitution to injured customers that goes beyond the universe of customers and transactions covered by the staff's investigation.⁸

4. Providing Substantial Assistance to FINRA Investigations

FINRA recognizes that receiving substantial assistance from firms during an investigation can assist FINRA in efficiently resolving investigations into violative conduct. Such assistance can have far-reaching benefits, including, among other things, shortening investigations and enhancing FINRA's ability to effectively and efficiently investigate large scale and complicated systemic failures, thereby reducing the regulatory burden on firms and FINRA resources. Examples of the types of substantial assistance that may, depending on the circumstances, warrant credit include:

- Providing access to individuals or documents outside FINRA's jurisdiction that are critical to a full investigation of violative conduct.
- Providing extraordinary assistance with the investigation. Upon learning of a problem, firms often undertake comprehensive internal investigations, and then brief FINRA staff on their findings. FINRA has credited these proactive undertakings by firms that greatly assisted the staff's investigations.⁹

- Cooperation with FINRA to uncover substantial industry wrongdoing. When on-going violative conduct has numerous participants yet is difficult to uncover, collaboration with the regulator can have a dramatic impact on regulatory consequences. This can include apprising FINRA of wrongdoing beyond the scope of the original investigation and alerting staff to industry-wide, systemic problems. When a firm or individual brings to the regulator's attention a pattern or practice of which the regulator was unaware, or is the first to come forward to cooperate in a widespread, industry-wide investigation and thereby assists the regulator in understanding, scoping and resolving the investigation, this assistance should be credited. Conditions for such credit include: (i) cooperation with the regulator to uncover related industry wrongdoing; (ii) providing substantial assistance in furtherance of the resulting investigation; and (iii) cooperating in all relevant respects.

Conclusion

Crediting extraordinary cooperation by firms and individuals in appropriate situations advances important regulatory goals. Among other things, it can shorten investigations, thereby reducing regulatory burdens on firms and FINRA resources, as well as apprise FINRA staff of wrongdoing beyond the scope of the original investigation and alerting staff to industry-wide, systemic problems. Encouraging firms and individuals to take immediate, proactive and meaningful steps and appropriately acknowledging the cooperative conduct in settlement documents may encourage others to take similar steps and will provide transparency into sanction terms and how the conduct was actually credited.

While FINRA staff will continue to assess the particular facts and circumstances in each case, including the nature of the conduct, the extent of customer harm, the duration of the misconduct and the existence of disciplinary history, the extent of a firm's extraordinary cooperation will be an important factor in determining the appropriate disciplinary action and the sanctions that will be sought by FINRA Enforcement.

Endnotes

- 1 This *Regulatory Notice* is intended to provide member firms and their associated persons with guidance concerning the factors that FINRA Enforcement considers when assessing the sanctions it will seek in the context of settlement discussions that precede the filing of a formal disciplinary action. Nothing herein is intended to alter the guidance for adjudicators set forth in the *Principal Considerations in Determining Sanctions* contained in FINRA's Sanction Guidelines.
- 2 NASD Rule 8210.
- 3 The FINRA Sanction Guidelines recognize that certain proactive, corrective measures taken by firms and individuals involved in the disciplinary process may have an impact on sanction determinations. Specifically, the *Principal Considerations* under the Guidelines provide for consideration in determining sanctions of, among other factors, self-reporting, corrective measures, and restitution prior to detection by the firm (in the case of an individual) or by a regulator (in the case of a firm), as well as substantial assistance to FINRA in its examination and/or investigation of the conduct. These Guidelines and *Principal Considerations* provide a foundation for much of what we say here, although it is important to note that they apply, strictly speaking, to adjudicators in contested matters.

The relevant *Principal Considerations* that apply to adjudicators in determining sanctions in contested matters are:
 2. Whether an individual or member firm respondent accepted responsibility for and acknowledged the misconduct to his or her employer (in the case of an individual) or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator.
 3. Whether an individual or member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention by the firm (in the case of an individual) or by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
 4. Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.
 12. Whether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA.
- 4 NYSE Rule 351(a) and NASD Rule 3070(a) both require firms to report certain violations to FINRA but at different times. These rules will be harmonized in the rulebook consolidation project. The type of self-reporting contemplated as extraordinary and deserving of credit would go significantly beyond these regulatory requirements. For example, a firm may satisfy its reporting requirement under Rule 351(a) by filing a brief RE-3 with FINRA. Self-reporting deserving of credit for cooperation would, at a minimum, have to include a detailed account of the discovered conduct and an offer to explain in complete detail all aspects of the conduct and provide relevant documents. See, NYSE Information Memorandum 05-65.

Endnotes (cont'd)

- 5 See, e.g., *DOE v. Morgan Stanley DW, Inc.*, AWC Action No. EAF0301160001 (Aug. 1, 2005) (The press release states: "In sanctioning Morgan Stanley, NASD took into account the firm's demonstrable steps, undertaken shortly after NASD's inquiry began, to enhance its system and procedures and which led to the firm's identification and removal of large numbers of accounts for which the Choice program was not appropriate."); *DOE v. CIBC World Markets Corp.*, AWC Action No. 2006004464101 (Jan. 8, 2008) (The press release states: "The fine for CIBC was reduced in recognition of the firm's actions in reporting the problem to FINRA and taking prompt remedial actions to correct the problem.")
- 6 This is not meant to suggest that a firm or individual cannot defend an Enforcement investigation into deficient policies and procedures. A firm that believes its procedures are adequate and does not change them promptly or until the very end of an investigation should not expect to receive a sanction reflecting credit for extraordinary cooperation in any settlement.
- 7 See, e.g., *DOE v. Northwestern Mutual Investment Services, LLC*, AWC Action No. 2006005084401 (June 28, 2007) (The press release states: "NASD imposed a reduced fine in recognition of the firm's prompt remedial steps after an NASD examination to assess client harm and provide remediation to eligible clients.")
- 8 See, e.g., *DOE v. AXA Advisors, LLC*, AWC Action No. 2005002269401 (Sept. 5, 2007) (The press release states: "FINRA ordered AXA Advisors to return \$1.4 million in fees to approximately 1800 customers. AXA Advisors voluntarily refunded an additional \$1.2 million to customers... AXA Advisors also unilaterally took steps to enhance its systems and procedures and to close accounts that were not appropriate for the fee based program.
- FINRA considered these steps in determining the sanctions in this case."); *DOE v. Banc of America Investment Services, Inc.*, AWC Action No. EAF0401010002 (Nov. 21, 2006) (The press release states: "In connection with the sanctions imposed in this AWC, NASD has taken into account certain demonstrable steps undertaken by BAIS, shortly after NASD issued Notice to Members 03-68, to update and enhance its systems and procedures relating to fee-based accounts. NASD also considered BAIS's self-reporting of certain conduct... [O]n its own initiative, BAIS identified the customers affected by this conduct and has reimbursed the customers the amounts they were charged for the transactions at issue.")
- 9 See, e.g., *DOE v. Instinet/Island*, AWC Action No. 2004200002601 (Oct. 3, 2005) and *DOE v. Piper Jaffrey*, AWC Action No. 2006006755701 (Dec 18, 2007). Firms often assert attorney-client privilege in connection with a firm's internal investigation. Such a firm could still receive credit for extraordinary cooperation if it found other ways to inform FINRA staff of pertinent facts without waiving the privilege. Indeed, consistent with FINRA's duty "to provide a fair procedure for the disciplining of members and persons associated with members," FINRA as a general matter recognizes the attorney-client privilege in its adjudicatory forum. Securities Exchange Act of 1934, 15 U.S.C. § 78(o)-3. Therefore, the waiver or non-waiver of the privilege itself will not be considered in connection with granting credit for cooperation. Moreover, it is not the waiver of attorney-client privilege that warrants credit for cooperation but rather the extraordinary assistance to the staff in uncovering the facts in an investigation that yields the benefit.

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Reporting Requirements

FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Reporting Requirements

Comment Period Expires: December 29, 2008

Executive Summary

As part of the process of developing a new, consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is requesting comment on a proposal relating to the FINRA reporting requirements.

The text of the proposed rule is set forth in Attachment A.

Questions regarding this *Notice* should be directed to Afshin Atabaki, Assistant General Counsel, Office of General Counsel, at (202) 728-8902.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by December 29, 2008.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

November 2008

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Systems

Key Topic(s)

- Customer Complaints
- Disciplinary-Related Events
- Regulatory Actions
- Reporting Requirements
- Statistical Information

Referenced Rules & Notices

- NASD Rule 3070
- NYSE Rule 351

Important Notes:

The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.²

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.³

Background

NASD Rule 3070 (Reporting Requirements) and Incorporated NYSE Rule 351 (Reporting Requirements)⁴ require member firms to report to FINRA certain specified events (*e.g.*, regulatory actions) and quarterly statistical information regarding written customer complaints.⁵ (The similarities and differences between the rules are described in greater detail in the table below.) FINRA uses the reported information for regulatory purposes. Among other things, the information assists FINRA to identify and investigate firms, offices and associated persons that may pose a regulatory risk.

Proposal

FINRA proposes replacing NASD Rule 3070 and NYSE Rule 351 with a single rule, proposed FINRA Rule 4530 (Reporting Requirements),⁶ in the Consolidated FINRA Rulebook. Proposed FINRA Rule 4530 is based in large part on NASD Rule 3070, taking into account requirements under NYSE Rule 351. The proposed rule also includes a “Supplementary Material” section that contains certain clarifications and definitions as well as codifications of existing staff guidance. The most significant proposed changes are described generally below. However, FINRA urges firms to carefully review the entire attached proposed rule text to understand the full extent of the proposed changes.

External Findings (Proposed FINRA Rule 4530(a)(1)(A))

NASD Rule 3070(a)(1) requires that a firm report whenever the firm or an associated person of the firm has been found to have violated, among other things, “any” rule or standard of conduct of any governmental agency, self-regulatory organization (SRO), or financial business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade. This provision requires firms to report findings of violations by an external body.

The proposal generally retains the requirement under NASD Rule 3070(a)(1), though it limits the scope of reportable findings of violation by an external body to violations of any securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, SRO or business or professional organization. FINRA believes that defining the scope of the rule in this manner will make it more effective and relevant to FINRA's program, as well as enhance firms' ability to more accurately report such information.

Internal Conclusions (Proposed FINRA Rule 4530(a)(3))

NYSE Rule 351(a)(1) requires that a firm report whenever it or its associated persons have violated, among other things, "any" rule or standard of conduct of any governmental agency, SRO, or business or professional organization, or engaged in conduct that is inconsistent with just and equitable principles of trade. This provision requires firms to report their internal conclusions of the enumerated violative conduct.

The proposal generally incorporates the requirement under NYSE Rule 351(a)(1). Similar to the scope of proposed FINRA Rule 4530(a)(1)(A) discussed above, the proposed rule requires a firm to report whenever the firm has concluded *on its own* that an associated person of the firm or the firm itself has violated any securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO. However, the requirement to report certain internal conclusions of violations would not extend to violations of rules or standards of conduct of business or professional organizations. In addition, proposed Supplementary Material .01 states that FINRA does not expect a firm to report an isolated violation by the firm or an associated person of the firm that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery.

Reporting Obligation (Proposed FINRA Rule 4530(d))

The proposal clarifies that a firm has an obligation to report under the rule the specified events and quarterly statistical information regarding written customer complaints, regardless of whether such information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD (Uniform Application for Broker-Dealer Registration), U4 (Uniform Application for Securities Industry Registration or Transfer) or U5 (Uniform Termination Notice for Securities Industry Registration) (collectively referred to as the Uniform Forms). (FINRA notes that it will work toward the goal of eliminating duplicative reporting of information disclosed on the Uniform Forms.)

Reporting Deadline (Proposed FINRA Rule 4530(a))

Consistent with the requirements of NYSE Rule 351, the proposal extends the time period for reporting any of the specified events to no later than 30 calendar days after the firm knows or should have known of the existence of the event (rather than the 10 business days currently provided under NASD Rule 3070(b)).

Domestic and Foreign Actions (Proposed FINRA Rule 4530)

Currently, both NASD Rule 3070 and NYSE Rule 351 make frequent reference to, for example, “any” regulatory or self-regulatory body, without denoting that it includes both domestic and foreign regulators. The proposal clarifies that the rule applies to both domestic and foreign actions and that it applies to actions by a “regulatory body,” which includes governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

Civil Litigation or Arbitration; Other Claims for Damages (Proposed FINRA Rule 4530(a)(1)(G))

The proposal merges for simplification the reporting provisions pertaining to any securities or commodities-related civil litigation or arbitration and any other claim for damages disposed of by judgment, award or settlement for certain monetary thresholds (current NASD Rules 3070(a)(7) and (a)(8) and NYSE Rules 351(a)(7) and (a)(8)). In addition, consistent with other provisions of the current rules, the proposal extends the provision to include any insurance-related civil litigation or arbitration.

Statutory Disqualifications (Proposed FINRA Rule 4530(a)(1)(H))

Consistent with NYSE Rule 351(a)(9), the proposal requires a firm to report whenever the firm itself is subject to a “statutory disqualification” and clarifies that a firm is required to report whenever an associated person of the firm is subject to a “statutory disqualification.” The proposal also replaces the requirement in NASD Rule 3070(a)(9) and NYSE Rule 351(a)(9) to report whenever a firm or an associated person of the firm “is associated in any business or financial activity” with a person subject to a “statutory disqualification” with a requirement to report whenever the firm or an associated person of the firm “is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities” with a person subject to a “statutory disqualification.” FINRA believes that this change provides greater clarity as to the scope of the provision.

Internal Disciplinary Actions Against Associated Persons (Proposed FINRA Rule 4530(a)(2))

Similar to NASD Rule 3070(a)(10) and NYSE Rule 351(a)(10), the proposal continues to require a firm to report certain disciplinary actions taken by the firm against its associated persons. However, the proposal clarifies that any such disciplinary action involving the withholding of compensation or of any other remuneration (not just commissions) in excess of \$2,500 is a reportable event.

Elimination of the Exemption for Dual Members Subject to Another SRO's Rule

NASD Rule 3070(e) provides an exemption for firms subject to substantially similar reporting requirements of another SRO. This provision is intended to exempt Dual Members subject to the reporting requirements of NYSE Rule 351. The proposal eliminates this exemption since FINRA proposes creating a single rule and deleting the applicable reporting requirements of NYSE Rule 351 (as noted below). Accordingly, all FINRA member firms will be subject to proposed FINRA Rule 4530.

Filing of Related Documents with FINRA (Proposed FINRA Rule 4530(e))

NASD Rule 3070(f) requires firms to file copies of certain criminal and civil complaints and arbitration claims with FINRA, including copies of any securities or commodities-related private civil complaint or arbitration claim filed against the firm in any forum other than FINRA Dispute Resolution. Consistent with revisions discussed above, the proposal extends such filing requirement to copies of insurance-related private civil complaints and arbitration claims.

Addition of Supplementary Material

FINRA also proposes adding supplementary material to, among other things:

- Clarify the distinction between a firm's internal conclusion of violative conduct and an external finding of violative conduct;
- Define the term "found" as used in the rule generally consistent with the definition of the term in the Uniform Forms, and clarify that the term also includes any formal finding (regardless of whether the finding will be appealed), but that it does not include a minor rule violation involving a fine of \$2,500 or less;

- Clarify that when calculating the monetary thresholds for reporting civil litigations, arbitrations or other claims for damages, firms must include any attorneys fees and interest in the total amount;
- Clarify the application of the rule to former associated persons;
- Codify existing staff guidance regarding a firm's obligation to report quarterly statistical information with respect to written customer complaints alleging theft or misappropriation of funds or securities, or forgery;⁷ and
- Codify existing staff guidance regarding the calculation of the monetary thresholds when the parties are subject to "joint and several" liability.⁸

FINRA proposes to delete paragraphs (a) through (d) of NYSE Rule 351 and NYSE Rules 351.10 and 351.13 relating to the reporting of specified events and quarterly statistical information regarding written customer complaints because these provisions are substantially similar to the provisions of proposed FINRA Rule 4530.

Similar Requirements

Description	Applicable NASD/NYSE Provisions
<p>NASD Rule 3070 and NYSE Rule 351 require a firm to promptly report to FINRA whenever the firm or an associated person of the firm is:</p>	
<p>the subject of a written customer complaint alleging theft or misappropriation of funds or securities, or forgery;</p>	<p>NASD Rule 3070(a)(2) NYSE Rule 351(a)(2)</p>
<p>named as a defendant or respondent in any proceeding brought by a regulatory body or SRO alleging the violation of the federal or state securities, insurance or commodities laws or the by-laws, rules and regulations of any securities, insurance or commodities regulatory body or SRO;</p>	<p>NASD Rule 3070(a)(3) NYSE Rule 351(a)(3)</p>
<p>denied registration or expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory body or SRO or denied membership or continued membership in any such SRO, or barred from becoming associated with any member of any such SRO;</p>	<p>NASD Rule 3070(a)(4) NYSE Rule 351(a)(4)</p>

Description	Applicable NASD/NYSE Provisions
indicted or convicted of, pleaded guilty or no contest to any felony, certain enumerated misdemeanors or substantially equivalent activity;	NASD Rule 3070(a)(5) NYSE Rule 351(a)(5)
a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a financial institution that was suspended, expelled or had its registration denied or revoked or is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to any felony or misdemeanor;	NASD Rule 3070(a)(6) NYSE Rule 351(a)(6)
a defendant or respondent in any securities or commodities-related civil litigation or arbitration that has been disposed of by judgment, award or settlement for certain monetary thresholds;	NASD Rule 3070(a)(7) NYSE Rule 351(a)(7)
the subject of any other claim for damages by a customer or broker-dealer that is settled for certain monetary thresholds;	NASD Rule 3070(a)(8) NYSE Rule 351(a)(8)
associated in any business or financial activity with any person who is subject to a “statutory disqualification”; or,	NASD Rule 3070(a)(9) NYSE Rule 351(a)(9)
the subject of any disciplinary action by the employing member firm involving suspension, termination, the withholding of commissions or fines in excess of \$2,500, or involving a significant limitation on the associated person’s activities.	NASD Rule 3070(a)(10) NYSE Rule 351(a)(10)
NASD Rule 3070 and NYSE Rule 351 require an associated person to promptly report to the firm the existence of any of the specified events described above.	NASD Rule 3070(b) NYSE Rule 351(b)
NASD Rule 3070 and NYSE Rule 351 also require firms to report to FINRA quarterly statistical information regarding written customer complaints.	NASD Rule 3070(c) NYSE Rules 351(d) and 351.13

Differing Requirements

Description	Applicable NASD/NYSE Provisions
<p>NASD Rule 3070 requires a firm to promptly report to FINRA whenever the firm or an associated person of the firm has been found by a court, governmental agency, SRO or financial business or professional organization to have violated the securities laws, any rule or standards of conduct of any governmental agency, SRO or financial business or professional organization, or to have engaged in conduct that is inconsistent with just and equitable principles of trade.</p>	<p>NASD Rule 3070(a)(1)</p>
<p>NYSE Rule 351 requires a firm to promptly report to FINRA whenever it has concluded that the firm or an associated person of the firm has violated any provision of the securities laws, any agreement with, rule or standards of conduct of any governmental agency, SRO or business or professional organization, or has engaged in conduct that is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the NYSE.</p>	<p>NYSE Rule 351(a)(1) NYSE Information Memorandum 06-11</p>
<p>NYSE Rule 351 requires a firm to report whenever the firm itself is subject to a “statutory disqualification.” NYSE Rule 351 also requires an “approved person” to promptly report to the firm whenever such person is subject to a “statutory disqualification” and further requires the firm to so notify the NYSE.⁹</p>	<p>NYSE Rules 351(a)(9) and (c)</p>
<p>NYSE Rule 351 requires firms to report the specified events within 30 days of their occurrence; NASD Rule 3070 requires a firm to report an event not later than 10 business days after the firm knows or should have known of the event’s existence.</p>	<p>NYSE Information Memorandum 90-17 NASD Rule 3070(b)</p>

Description	Applicable NASD/NYSE Provisions
<p>NASD Rule 3070 provides an exemption from the reporting requirements of the rule for firms subject to substantially similar reporting requirements of another SRO. (As noted above, this provision is intended to exempt Dual Members subject to the reporting requirements of NYSE Rule 351.)</p>	NASD Rule 3070(e)
<p>NASD Rule 3070 requires firms promptly to file with FINRA copies of certain criminal and civil complaints and arbitration claims, including, but not limited to, any securities or commodities-related private civil complaint or arbitration claim filed against the firm (other than arbitration claims that are originally filed in the FINRA Dispute Resolution forum).</p>	NASD Rule 3070(f)

Endnotes

- 1 The current FINRA rulebook includes (1) NASD Rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). For more information about the rulebook consolidation process, see *Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (SEA) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See SEA Section 19 and rules thereunder.
- 4 For convenience, Incorporated NYSE Rule 351 is hereinafter referred to as “NYSE Rule 351.”
- 5 NYSE Rule 351(e) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation) govern trade investigation reporting requirements. NYSE Rules 351(f), 351.11 and 351.12 govern the annual attestation requirement of the research analyst conflict of interest rules. These provisions will be addressed as part of the supervision rules and research analyst conflict of interest rules, respectively. See *Regulatory Notice 08-24* (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls) and *Regulatory Notice 08-55* (October 2008) (FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules).
- 6 The proposed rule may be renumbered as part of the final Consolidated FINRA Rulebook.
- 7 See *NASD Notice to Members 96-85* (December 1996) (Customer Complaint Reporting Rule Update).
- 8 See *id.*
- 9 As defined under the NYSE Rules, an “approved person” is a person who either controls a member or is engaged in a securities or kindred business and is controlled by or under common control with a member.

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ATTACHMENT A

Below is the text of the proposed rule change. New language is underlined; deletions are in brackets.¹

[3070]4530. Reporting Requirements

(a) Each member shall promptly report to FINRA, [the Association whenever such member or person associated with the member] but in any event not later than 30 calendar days, after the member knows or should have known of the existence of any of the following:

(1) the member or an associated person of the member:

(A) has been found to have violated any securities, insurance, commodities, financial or investment-related [provision of any securities] laws, rules, [or] regulations[, any rule] or standards of conduct of any domestic or foreign [governmental agency,] regulatory body, self-regulatory organization[, or [financial] business or professional organization[, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred];

[(2)](B) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

[(3)](C) is named as a defendant or respondent in any proceeding brought by a domestic or foreign regulatory body or self-regulatory [body] organization alleging the violation of any provision of the Exchange Act, or of any other federal, [or] state or foreign securities, insurance[, or commodities statute, or of any rule or regulation thereunder, or of any provision of the [B]by-laws, rules or similar governing instruments of any securities, insurance or commodities domestic or foreign regulatory body or self-regulatory organization;

[(4)](D) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry domestic or foreign regulatory body or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

1 Attachment A sets forth the text of current NASD Rule 3070 marked to show changes between NASD Rule 3070 and proposed FINRA Rule 4530. The proposal would delete NASD Rule 3070, paragraphs (a) through (d) of NYSE Rule 351 and NYSE Rules 351.10 and 351.13. Proposed Supplementary Material .08 reminds firms of their obligations under proposed FINRA Rule 3110(b)(5), which is part of the proposed supervision rules. See *Regulatory Notice 08-24* (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls).

[(5)](E) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military[,] or foreign court;

[(6)](F) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company [which] that was suspended, expelled or had its registration denied or revoked by any domestic or foreign [agency] regulatory body, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution [which] that was convicted of or pleaded no contest to, any felony or misdemeanor in a domestic or foreign court;

[(7)](G) is a defendant or respondent in any securities, insurance or commodities-related civil litigation or arbitration, or is the subject of any other claim for damages by a customer, broker or dealer [which] that has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the member is the defendant or respondent or is the subject of any claim for damages by a customer, broker or dealer, then the reporting to [the Association] FINRA shall be required only when such judgment, award[,] or settlement is for an amount exceeding \$25,000; or

[(8)] is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding \$15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim is settled for an amount exceeding \$25,000;]

[(9)](H) is, or is involved [associated] in the sale of any [business or] financial [activity] instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act[, and the member knows or should have known of the association]. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification;

[(10)](2) an associated person of the member is the subject of any disciplinary action taken by the member [against any person associated with the member] involving suspension, termination, the withholding of [commissions] compensation or of any other remuneration in excess of \$2,500, [or] the imposition of fines in excess of \$2,500[,] or is otherwise disciplined in any manner [which] that would have a significant limitation on the individual's activities on a temporary or permanent basis[.]; or

(3) the member has concluded that an associated person of the member or the member itself has violated any securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization.

(b) Each person associated with a member shall promptly report to the member the existence of any of the [conditions] events set forth in paragraph (a)(1) of this Rule. [Each member shall report to the Association not later than 10 business days after the member knows or should have known of the existence of any of the conditions set forth in paragraph (a) of this rule.]

(c) Each member shall report to [the Association] FINRA statistical and summary information regarding customer complaints in such detail as [the Association] FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, "customer" includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and "complaint" includes any written grievance by a customer involving the member or person associated with [a] the member.

(d) Nothing contained in this Rule shall eliminate, reduce[,] or otherwise abrogate the responsibilities of a member or person associated with a member to promptly [file with full disclosure,] disclose required [amendments to] information on the Forms BD, [Forms] U[-]4 [and] or U[-]5, as applicable, [or] to make any other required filings[, and] or to respond to [NASD] FINRA with respect to any customer complaint, examination[,] or inquiry. In addition, members are required to comply with the reporting obligations under paragraphs (a) and (c) of this Rule, regardless of whether the information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD, U4 or U5.

[(e)] Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from paragraphs (a), (b) and (c) of this Rule.]

[(f)](e) Each member shall promptly file with [NASD] FINRA copies of:

(1) any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)[(5)](1)(E) of this Rule;

(2) any complaint in which a member is named as a defendant or respondent in any securities, insurance or commodities-related private civil litigation;

(3) any securities, insurance or commodities-related arbitration claim filed against a member in any forum other than the [NASD] FINRA Dispute Resolution forum;

(4) any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U[-]4, irrespective of any dollar thresholds Form U[-]4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the [NASD] FINRA Dispute Resolution forum.

[(g)](f) Members shall not be required to comply separately with paragraph [(f)] (e) in the event that any of the documents required by paragraph [(f)] (e) have been the subject of a request by [NASD] FINRA's Registration and Disclosure staff, provided that the member produces those requested documents to the Registration and Disclosure staff not later than 30 days after receipt of such request. This paragraph does not supersede any [NASD] FINRA rule or policy that requires production of documents specified in paragraph [(f)] (e) sooner than 30 days after receipt of a request by the Registration and Disclosure staff.

• • • Supplementary Material: — — — — —

.01 Reporting of Firms' Conclusions of Violations. For purposes of paragraph (a)(3) of this Rule, with respect to violative conduct by an associated person, the reporting obligation under paragraph (a)(3) must be read in conjunction with the reporting obligation under paragraph (a)(2) of this Rule. If a member has concluded that an associated person has engaged in violative conduct and imposes the discipline set forth under paragraph (a)(2) of this Rule, then the member is required to report the event under paragraph (a)(2), and it need not report the event under paragraph (a)(3). In addition, for purposes of paragraph (a)(3) of this Rule, FINRA does not expect a member to report an isolated violation by the member or an associated person of the member that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery.

.02 Firms' Conclusions of Violations versus External Findings. Members should be aware that paragraph (a)(3) of this Rule is limited to situations where the member has concluded on its own that violative conduct has occurred. Paragraph (a)(1)(A) of this Rule is limited to situations where there has been a finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, self-regulatory organization or business or professional organization.

.03 Meaning of "Found." The term "found" as used in paragraph (a)(1)(A) of this Rule includes among other formal findings, adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include informal agreements, deficiency letters, examination reports, memoranda of understanding, cautionary actions, admonishments and similar informal resolutions of matters. For example, a Letter of Acceptance, Waiver and Consent or an Offer of Settlement is considered an adverse final action. The term "found" also includes any formal finding, regardless of whether the finding will be appealed. The term "found" does not include a violation of a self-regulatory organization rule that has been designated as "minor" pursuant to a plan approved by the SEC, if the sanction imposed consists of a fine of \$2,500 or less, and if the sanctioned person does not contest the fine.

.04 Meaning of "Regulatory Body." For the purposes of this Rule, the term "regulatory body" refers to governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

.05 Reporting of Individual and Related Events. With respect to a reportable event under paragraph (a) of this Rule, members should not report the same event under more than one subparagraph. Members should report the event under the most appropriate subparagraph. However, members should be aware that they may be required to report related events under more than one subparagraph. For instance, if a member is named as a respondent in a proceeding brought by a self-regulatory organization alleging the violation of the self-regulatory organization's rules, the member would be required to report that event under paragraph (a)(1)(C) of this Rule. In addition, if the member subsequently is found to have violated the self-regulatory organization's rules, the member would be required to report that finding under paragraph (a)(1)(A) of this Rule.

.06 Calculation of Monetary Thresholds. For purposes of paragraph (a)(1)(G) of this Rule, when determining the dollar amount that would require a report, members must include any attorneys fees and interest in the total amount. In addition if the parties are subject to "joint and several" liability, the amount for each party must be aggregated and reported, if above the dollar thresholds under paragraph (a)(1)(G), as if each party is separately liable for the aggregated amount. For instance, if two parties have "joint and several" liability for \$40,000, the amount reported would be \$40,000 for each party.

.07 Former Associated Persons. For purposes of paragraphs (a) and (c) of this Rule, members should report an event relating to a former associated person if the event occurred while the individual was associated with the member.

.08 Customer Complaints. Any written customer complaint reported under paragraph (a)(1)(B) of this Rule also must be reported pursuant to paragraph (c) of this Rule. Members also should be aware that pursuant to Rule 3110(b)(5), their supervisory procedures must include procedures to capture, acknowledge and respond to all written (including electronic) customer complaints.

* * * * *

Election Notice

Notice of SFAB Election and Ballots

Executive Summary

The purpose of this *Notice* is to distribute to eligible FINRA small firms¹ the ballots to elect two regional members of the Small Firm Advisory Board (SFAB). Two seats on the SFAB are up for election, the Midwest and the South Region seats.

FINRA small firms in the Midwest and South Regions as of the close of business on November 20, 2008, are eligible to vote in this election. Eligible FINRA small firms can vote for one candidate running for the SFAB seat representing the region to which they are assigned in the Central Registration Depository. Firms are urged to vote in the election of SFAB members.

Ballots are due on Friday, December 19, 2008, and the newly elected SFAB members will take office in January 2009.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, at (202) 728-8949; or
- T. Grant Callery, Executive Vice President and General Counsel, FINRA, at (202) 728-8285.

SFAB Election

The composition of the SFAB was revised in 2008 to comprise ten members consisting of:

- five regional members elected by small firms in the five FINRA regions (one from each region); and
- five at-large members appointed by FINRA.

Additionally, the FINRA Board's Small Firm Governors² serve as ex-officio members of the SFAB.

November 21, 2008

Suggested Routing

- Executive Representatives
- Senior Management

The five regional members represent the following geographic regions:

- Midwest Region:** Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (*Districts 4 and 8*)
- New York Region:** New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (*District 10*)
- North Region:** Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (*Districts 9 and 11*)
- South Region:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, the Canal Zone, Puerto Rico and the Virgin Islands (*Districts 5, 6 and 7*)
- West Region:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (*Districts 1, 2 and 3*)

As previously mentioned, the Midwest and South Region seats are up for election.

Candidate Eligibility

Any senior executive of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the Midwest or South regions was eligible to have his or her name placed on the SFAB ballot for that region. Eligible senior executives of firms include owners, FINOPs, chief executive officers, presidents, chief compliance officers, chief operating officers or individuals of comparable status.

Attachment A lists the candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available at www.finra.org/sfab/candidateprofiles.

Terms of SFAB Members

The individual who receives the most votes in a region will be elected to serve a three-year term.

In order to maintain continuity on the SFAB, FINRA is phasing in three-year terms. The terms of the individuals elected during the previous election were staggered—and not all of them were elected to serve a full three-year term.³ The SFAB members elected in this election will serve a full three-year term.

The term of an SFAB member will terminate immediately upon a determination by the SFAB, by a majority vote of the remaining members, that the member no longer satisfies the eligibility criteria. Additionally, the FINRA Board may remove from the SFAB a member who is unable or fails to discharge the member's duties or violates SFAB policies.

Once an individual has completed a full three-year elected term on the SFAB, he or she is ineligible to run for reelection to the SFAB for another three years.⁴

Voting Eligibility

As mentioned above, eligible FINRA small firms can vote for a candidate running for the SFAB seat representing the region to which they are assigned in the Central Registration Depository.

Ballots have been mailed, along with a copy of this *Notice*, to the executive representatives of small firms in the Midwest and South Regions to elect the two regional members of the SFAB. Firms may vote for only one candidate listed on the ballot.

Voting Methods

Firms will be able to vote by telephone, the Internet or by U.S. mail. The ballot sent to eligible small firms contains detailed instructions on the submission procedures.

It is important that all eligible member firms vote. Ballots are due on Friday, December 19, 2008.

Endnotes

- 1 A small firm is defined as a member firm that employs at least one and no more than 150 registered persons. See Article I (ww) of the FINRA By-Laws.
- 2 A Small Firm Governor is defined as a member of the FINRA Board elected by small firms. In order to be eligible to serve, a Small Firm Governor must be registered with a member firm that is a small firm and must be an Industry Governor. See Article I (xx) of the FINRA By-Laws.
- 3 In the previous election, the New York Region Representative was elected to a three-year term; the West and North Region Representatives were elected to two-year terms; and the Midwest and South Region Representatives were elected to one-year terms.
- 4 As previously indicated, the individuals currently seated as the Midwest Region and South Region SFAB Representatives were elected to one-year terms in 2008 and, therefore, are eligible for re-election.

Attachment A: SFAB Candidates for Midwest and South Region Seats

Midwest Region Candidates

Eric A. Bederman	Chief Operating & Compliance Officer Bernardi Securities, Inc.
Deborah Castiglioni	Chief Executive Officer Cutter & Company, Inc.
Steven Greenwald	Chief Executive Officer and Chief Compliance Officer Telemus Investment Brokers, LLC
Edward A. Horwitz	President Horwitz & Associates, Inc.
Michael Nolan	President and Chief Executive Officer Terra Nova Financial LLC

South Region Candidates

Carolyn R. May	Chief Compliance Officer / Advisory Director Simmons First Investment Group, Inc.
David Wiley III	President Wiley Brothers – Aintree Capital
Caroline Wisniewski	President, Owner Bridge Capital Associates, Inc.

Information Notice

Extension of Current Rate for Fees Paid Under Section 31 of the Exchange Act

Executive Summary

The SEC has been operating under a continuing resolution for fiscal year (FY) 2009 since October 1, 2008. As such, the Section 31 rate applicable to the sales of specified securities transactions on the exchanges and in the over-the-counter markets will remain at the current rate of \$5.60 per million until further notice.

Questions concerning this *Notice* should be directed to Rob Renner, FINRA Senior Director of Accounting Operations, at (240) 386-5303; or Kathleen O'Mara, Associate General Counsel, Finance, at (240) 386-5309.

Discussion

The Securities and Exchange Commission (SEC) has been operating under a continuing resolution since the start of FY 2009 on October 1, 2008 (*See Fee Rate Advisory #2 for FY 2009 on the SEC's Web site at www.sec.gov/news/press/2008/2008-232.htm*). The SEC specified, among other things, that the fee paid under Section 31 of the Securities Exchange Act of 1934 (Exchange Act) will remain at the current rate of \$5.60 per million while the agency operates under a continuing resolution. The SEC expects to be operating under a continuing resolution through March 6, 2009.

November 3, 2008

Suggested Routing

- Compliance
- Legal
- Trading

Key Topics

- Section 31 Fee

Referenced Rules & Notices

- Section 3 of Schedule A to the FINRA By-Laws
- Section 31 of the Securities Exchange Act of 1934

Further, as the SEC has previously announced, the Section 31 fee rate will increase from \$5.60 per million to \$9.30 per million 30 days after the date of enactment of its regular FY 2009 appropriation. FINRA will notify member firms through an *Information Notice* when the SEC's regular appropriation is enacted and the final date has been announced for implementing the rate change to \$9.30 per million.

FINRA obtains its Section 31 fees from its membership, in accordance with Section 3 of Schedule A to the FINRA By-Laws. Section 3 specifies that the amount firms are assessed will be determined periodically in accordance with Section 31 of the Exchange Act.

Information Notice

September 2008 Supplement to the Options Disclosure Document

On September 19, 2008, the SEC approved a supplement to the Options Disclosure Document (ODD) (www.optionsclearing.com/publications/risks/riskstoc_sep08_sup.pdf). The ODD contains general disclosures on the characteristics and risks of trading standardized options. The recently approved supplement reflects changes to disclosure regarding certain options on variability indexes¹ and strategy-based indexes. In addition, the supplement also contains disclosures regarding the adjustment of stock option contracts to reflect cash dividends or distributions on the underlying securities. As with other supplements to the ODD, this should be read in conjunction with the current ODD entitled *Characteristics and Risks of Standardized Options* (www.optionsclearing.com/publications/risks/riskstoc.pdf).

Rule 9b-1 under the Securities Exchange Act requires broker-dealers to deliver the ODD and supplements to customers.² FINRA has similar requirements in NASD Rule 2860(b)(11)(A)(1), which requires that member firms deliver the current ODD to each customer at or prior to the time the customer is approved to trade options. In addition, NASD Rule 2860(b)(11)(A)(1) requires firms to distribute a copy of each ODD supplement to customers who previously received the ODD. ODD supplements must be delivered no later than the time a customer receives a confirmation of a transaction in the category of options to which the amendment pertains. NASD Rule 2860(b)(11)(A)(3) requires that FINRA advise member firms when revisions to the ODD are made.

November 12, 2008

Suggested Routing

- Compliance
- Institutional
- Legal
- Options
- Senior Management
- Trading

Key Topics

- Adjustment Methodology
- Options
- Options Disclosure Document
- Strategy-based Index Options
- Variability Index Options

Referenced Rules & Notices

- NASD Rule 2860
- NTM 98-3
- SEA Rule 9b-1

To comply with the requirements of NASD Rule 2860(b)(11)(A)(1), firms may distribute the ODD supplement in various ways, including, but not limited to, one of the following:

1. conducting a mass mailing of the supplement to all of its customers approved to trade options who have already received the ODD; or
2. distributing the supplement to a customer, who has already received the ODD, not later than the time a customer receives a confirmation of a transaction in the category of options to which the amendment pertains.

Firms are reminded that they may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the ODD and supplements thereto, provided the firm adheres to the standards contained in the May 1996 and October 1995 Securities Exchange Commission Releases³ and as discussed in *Notice to Members 98-3* (<http://www.finra.org/ntm/98-3/>). As recently noted, firms may transmit the ODD and supplements to customers who have consented to electronic delivery through the use of a hyperlink.⁴

Questions regarding this *Notice* may be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or Kathryn M. Moore, Assistant General Counsel, OGC, at (202) 974-2974.

Endnotes

- 1 The term “variability indexes” refers to implied volatility, realized variance, and realized volatility indexes.
- 2 17 CFR 240.9b-1.
- 3 See Securities Act Release No. 7288 (May 9, 1996) 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995) 60 FR 53458 (October 13, 1995).
- 4 See Securities Act Release No. 58738 (October 6, 2008) 73 FR 60371 (October 10, 2008).

Disciplinary and Other FINRA Actions

Firms Fined, Individuals Sanctioned

Midas Securities, LLC (CRD #103680, Anaheim, California) and Jay S. Lee (CRD #4338187, Registered Principal, Anaheim Hills, California) submitted Offers of Settlement in which the firm was censured and fined \$15,000. Lee was fined \$15,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the allegations, the firm and Lee consented to the described sanctions and to the entry of findings that they failed to update Lee's Uniform Application for Securities Industry Registration or Transfer (Form U4) with material information.

The suspension in any capacity is in effect from October 6, 2008, through November 19, 2008. (FINRA Case #2005000075703)

Sloan Securities Corp. (CRD #17930, Fort Lee, New Jersey) and James Curtis Ackerman (CRD #1641924, Registered Principal, Demarest, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$65,000. Ackerman was fined \$35,000, suspended from association with any FINRA member in any principal capacity for three months and suspended from association with any FINRA member in any capacity for 10 business days. The suspensions were to run concurrently. Ackerman was also ordered to requalify by examination as a general securities principal by passing the Series 24 examination within 60 days of the end of the three-month suspension. If Ackerman fails to pass the examination, he may not perform any functions requiring principal registration until such time as he passes the required examination.

Without admitting or denying the findings, the firm and Ackerman consented to the described sanctions and to the entry of findings that the firm, acting through Ackerman, allowed a registered representative to act as an unregistered principal of a branch. The findings stated that the firm, acting through Ackerman, failed to establish, maintain and enforce a supervisory system and written procedures to supervise the activities of registered members to achieve compliance with applicable rules and regulations regarding markups/markdowns, commission charges, municipal securities and private securities transactions, outside business activities, Securities and Exchange Commission (SEC) Regulation SP, sale of private placements, free-riding and withholding, advertising and sales literature, and the Regulatory Element of the Continuing Education Requirement. The findings also stated that the firm, acting through

Reported for November 2008

FINRA has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

Ackerman, failed to enforce its supervisory system and written procedures regarding the securities activities of a branch office so that the firm failed to provide for supervision of that branch's registered representatives, particularly with respect to suitability of unregistered securities. The findings also included that, in connection with its branch office inspections, the firm, acting through Ackerman, failed to prepare a written inspection report that included the testing and verification of its policies and procedures regarding the safeguarding of customer funds and securities, validation of customer address changes, transmittal of funds and other areas. The firm also failed to establish or enforce procedures for a registered principal to review business-related electronic correspondence in one of its branch offices. FINRA found that the firm, acting through Ackerman, failed to designate and specifically identify to FINRA one or more principals to establish, maintain and enforce a system of supervisory control policies and procedures and, therefore, failed to establish procedures providing for the review and supervision of customer account activity conducted by branch office managers, sales managers or other supervisory persons. FINRA also found that the firm failed to establish procedures reasonably designed to provide heightened supervision over the activities of each producing manager responsible for generating 20 percent or more of the revenue of the business units supervised by the producing manager's supervisor.

In addition, FINRA determined that, in connection with a transaction in which the firm received approximately \$350,000 in customer funds to purchase shares of an unregistered stock, the firm failed to establish and maintain a Special Reserve Bank Account for the Exclusive Benefit of Customers, prepare computations to determine the amount of funds and/or qualified securities needed to be deposited in the reserve account, and make the required deposit of funds and/or qualified securities to the account. Moreover, FINRA determined that the firm failed to accurately post the receipt and payment of customer funds in its general ledger. Furthermore, FINRA found that in connection with a contingent private offering in which it was seeking to raise \$60 million as a placement agent, the firm, acting through Ackerman, caused the release of public customer funds from escrow before the satisfaction of the contingency, contrary to the terms of the offering. The findings included that the firm failed to maintain a Checks Received and Forwarded Blotter in a branch office, and that order tickets for equity, corporate bond and municipal securities transactions contained deficiencies. The findings also included that the firm failed to file summary and statistical information with FINRA for customer complaints.

The suspension in any principal capacity is in effect from October 6, 2008, through January 5, 2009. The suspension in any capacity was in effect from October 6, 2008, through October 17, 2008. (FINRA Case #E9B2005014202)

QA3 Financial Corp. (CRD #14754, Omaha, Nebraska) and Theodore Aaron Lange Sr. (CRD #301984, Registered Principal, San Marcos, California) submitted Letters of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Lange was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for 15 business days. The fine must be paid either immediately upon Lange's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings,

the firm and Lange consented to the described sanctions and to the entry of findings that the firm and Lange failed to adequately supervise a registered representative who conducted a private offering; permitted funds to be released to the issuer prior to the minimum contingency being met; and did not send timely notice and reconfirmation to public customers in order to extend the offering period. The findings stated that the representative did not set up a proper escrow account for the offering and allowed the funds in the account to be invested in impermissible investments. The findings also stated that Lange participated in the offering and was aware of developments in the offering

The suspension was in effect from October 6, 2008, through October 24, 2008. (FINRA Cases #2006007353801/2006007353803)

Firms Fined

Alterna Capital Corp. (CRD #130233, Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$48,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it served as the placement agent for contingency offerings and, acting at the direction of its former principal, prematurely disbursed investor funds from escrow before the contingencies had been satisfied through *bona fide* investments, thereby rendering the offering memoranda false and misleading. The findings stated that the firm failed to designate a licensed Limited Principal – Introducing Broker/Dealer Financial and Operations (FINOP) or open a window for a designated replacement for a three-month period. (FINRA Case #2006006316002)

Calyon Securities (USA) Inc. (CRD #190, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted inaccurate data to the Order Audit Trail System (OATS). The findings stated that it submitted limit orders with a limit order display indicator of “Y” (Yes), which indicated that it had received instructions from public customers that a non-block limit order should not be displayed, when no such instructions had been received. (FINRA Case #2007008917101)

Credit Suisse Securities (USA) LLC (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$200,000 and ordered to pay \$193,023, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it sold corporate bonds to customers and failed to sell the bonds at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to each bond at the time of the transaction, the expense involved and that the firm was entitled to a profit. (FINRA Case #2006004268901)

Edward D. Jones & Co., L.P. (CRD #250, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the Trade Reporting and Compliance Engine (TRACE) transactions in TRACE-eligible securities within 15 minutes of execution time. **(FINRA Case #2006006054601)**

Ferris, Baker Watts Incorporated (CRD #285, Baltimore, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$48,500 and required to pay \$224.80, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with customers, it failed to use reasonable diligence to ascertain the best inter-dealer market and buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm accepted short sale orders in equity securities from another person, or effected short sales in equity securities for its own account, without having reasonable grounds to believe that the securities could be borrowed so that they could be delivered on the date delivery is due. FINRA also found that the firm failed to provide written confirmations disclosing to customers the correct mark-up and an accurate price. The findings stated that the firm failed to show the correct order entry time on brokerage order memoranda. The findings also stated that the firm failed to report to the NASD/Nasdaq Trade Reporting Facility (TRF) the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross. Further, the findings included that the firm transmitted to OATS inaccurate, incomplete or improperly formatted data, in that data were reported in non-military time, rather than the required military time. FINRA also found that the firm made available a report that included incorrect order information about the covered orders in national market system securities that it received for execution. In addition, the findings stated that the firm failed to represent customer order interest in the firm's quotations and failed to timely and accurately report its short interest positions to NASD (now known as FINRA). The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning short interest reporting. The findings also included that the firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of execution time. **(FINRA Case #2005003223401)**

Fig Partners, LLC (CRD #41554, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to properly process orders for equity securities resulting in it executing short sale orders while failing to properly mark the orders as short; executing a long sale order while failing to properly mark the order as long; and failing to report the correct symbol indicating whether executed transactions were buy, sell, sell short or cross for transactions in reportable securities to the TRF. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. **(FINRA Case #2006006727701)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it inaccurately reported the second leg of “riskless” principal transactions in designated securities to the TRF because it inaccurately designated the capacity of the transactions as “principal.” The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. **(FINRA Case #2007010225101)**

Granta Capital Group LLC fka Sky Capital LLC (CRD #114657, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to preserve copies of all electronic mail communications for three years, and/or maintain electronic mail communications for the first two years in an accessible place, as required by Section 17(a) of the Securities Exchange Act of 1934. **(FINRA Case #E102003193001)**

Hapoalim Securities USA, Inc. (CRD # 266, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures regarding registration and continuing education, best execution and sales transactions. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to provide written notification disclosing its correct capacity in transactions to its customers; and executed short sale orders and failed to properly mark the orders as short. The findings also stated that the firm failed to show the correct entry time on brokerage order memoranda. The findings also included that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulation and/or FINRA rules addressing registration and continuing education, best execution and sales transactions. FINRA also found that the firm failed to provide documentary evidence that it performed supervisory reviews set forth in its supervisory procedures concerning best execution, anti-intimidation and coordination, trade reporting and sales transactions. **(FINRA Case #2006005174801)**

INTL Trading, Inc. (CRD #45993, Altamonte Springs, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000, ordered to pay \$105, plus interest, in restitution to customers, and required to revise its written supervisory procedures regarding best execution, order handling, trade reporting and other trading rules. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NASDAQ Market Center (NMC) the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity. The findings stated that the firm incorrectly reported the second leg of “riskless” principal transactions as “principal” to the NMC and failed to partially execute customer limit orders within five minutes of activation. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve

compliance with applicable securities laws, regulations and/or FINRA rules concerning best execution, order handling, trade reporting and other trading rules. The findings also included that the firm failed to provide documentary evidence that it performed supervisory reviews set forth in its written supervisory procedures concerning order handling, best execution, trade reporting and other trading rules.

FINRA found that the firm traded NASDAQ securities for its own account at prices that would have satisfied an open customer market order without giving the customer orders a contemporaneous fill or partial execution either at the same or better price. **(FINRA Case #2006003972401)**

Intrade, LLC (CRD #104047, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report its short interest positions to NASD, nka FINRA, for more than a year. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning short interest reporting. **(FINRA Case #2005001700601)**

Merrill Lynch, Pierce, Fenner & Smith Inc. (CRD# 7691, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$242,500, and ordered to pay \$11,358.65, plus interest, in restitution to customers. The firm was also required to revise its written supervisory procedures regarding TRACE, OATS, trade reporting, short sales and Regulation SHO, trading during a trading halt, mixed capacity trading, compliance with the safe harbor requirements of Section 28(e) of the Securities Exchange Act of 1934 (Exchange Act), recordkeeping, limit order protection, the one-percent rule, the three-quote rule, best execution, multiple market participant identifiers (MPIDs), third-party trade reporting and market order protection.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; reported Route or Combined Order/Route Reports to OATS that OATS was unable to link to the related order due to inaccurate, incomplete or improperly formatted data; and submitted reportable order events (ROEs) to OATS that OATS rejected and the firm failed to repair them. The findings stated that the firm failed to report the correct contra-party identifier for transactions in TRACE-eligible securities to TRACE and reported transactions in TRACE-eligible securities it was not required to report. The findings stated that the firm failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order; failed to report, or timely report, the cancellation of trades previously submitted to NASDAQ or the OTC Reporting Facility; incorrectly reported the second leg of "riskless" principal transactions to the NMC, the TRF and the OTC Reporting Facility; failed to report the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency

capacity to the NMC; failed to report the correct symbol indicating whether transactions were buy, sell, sell sort, sell short exempt or cross in reportable securities to the NMC; and failed to report the correct execution time for transactions in reportable securities to the NMC.

The findings also stated that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price or its executing capacity in a transaction; and failed, within 90 seconds after execution, to transmit last sale reports of transactions in designated securities to the NMC. The findings also included that the firm failed to timely report information regarding transactions effected in municipal securities to the Real-time Reporting System (RTRS) and improperly reported information to the RTRS that it should not have reported. FINRA found that the firm incorrectly designated last sale reports of transactions in designated and eligible securities as ".PRP" to the NMC; failed to submit, or submitted inaccurate, reports to OATS; when it acted as principal for its own account, failed to provide written notification disclosing to its customers the correct reported trade price, the correct capacity in which the firm acted and that a transaction was executed at an average price. FINRA also found that the firm failed to show terms and conditions, correct execution time and a correct account number on brokerage order memoranda, and failed to preserve for a period of not less than three years, the first two in an accessible place, brokerage order memoranda. In addition, FINRA determined that the firm failed to properly mark short sale orders; incorrectly designated last sale reports of designated securities transactions as "W" to the TRF; and failed to report last sale reports of transactions in designated securities to the TRF.

Moreover, FINRA determined that the firm's supervisory system did not provide for supervision designed to achieve compliance regarding TRACE, OATS, trade reporting, short sales and Regulation SHO, trading during a trading halt, mixed capacity trading, compliance with the safe harbor requirements of Section 28(e) of the Exchange Act, recordkeeping, limit order protection, the one-percent rule, the three-quote rule, best execution, MPIDs, third-party trade reporting, and market order protection. **(FINRA Case #2005000036701)**

National Bank of Canada Financial Inc. (CRD #22698, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report its short interest positions to NASD (nka FINRA). **(FINRA Case #2005001700701)**

Northern Trust Securities, Inc. (CRD #7927, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report transactions in TRACE-eligible securities. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning TRACE reporting. **(FINRA Case #2006006834201)**

Oppenheimer & Co. Inc. (CRD #249, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification disclosing to its customers its correct capacity in transactions. The findings stated that the firm transmitted reports to OATS, in which the firm reported “riskless” principal orders to OATS without using the correct reporting exception code. The findings also stated that the firm made available a report on the covered orders in national market system securities that it received for execution from any person that included incorrect order information for the orders entered. **(FINRA Case #2006005739601)**

OTA LLC (CRD #25816, Purchase, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$45,000 and required to revise its written supervisory procedures regarding short sale affirmative determination, the firm’s supervisory system and qualification of supervisory personnel, SEC Rule 606 under Regulation NMS, statutory market making, the three-quote rule, trade reporting, short sale reporting, trading halts, entering quotations in multiple systems, multiple MPIDs, best execution, OATS, Regulation SHO, and anti-competitive practices. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected short sales in securities for its proprietary account(s) and failed to make/annotate an affirmative determination that it could borrow the securities or otherwise provide for delivery of the securities by settlement date. The findings stated that the firm failed to report the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity to the TRF. The findings also stated that the firm failed to provide written notification disclosing to its customers its correct capacity in transactions, and failed to provide written notification disclosing to its customers that the transactions were executed at an average price. The findings also included that the firm failed to show the cancellation time, the correct execution time, the terms and conditions and the correct entry time on brokerage order memoranda.

FINRA found that the firm failed to preserve brokerage order memoranda for not less than three years, the first two in an accessible place. FINRA also found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules concerning short sale affirmative determination, the firm’s supervisory system and qualification of supervisory personnel, SEC Rule 606 under Regulation NMS, statutory market making, the three-quote rule, trade reporting, short sale reporting, trading halts, entering quotations in multiple systems, multiple MPIDs, best execution, OATS, Regulation SHO and anti-competitive practices. **(FINRA Case #2005000012501)**

Piper Jaffray & Co. (CRD #665, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$167,500, ordered to pay \$6,758.78, plus interest, in restitution to customers, and required to revise its written supervisory procedures regarding recordkeeping and TRACE trade

reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in its fixed income area, it failed to show the correct execution time on brokerage order memoranda; failed to show the entry time for orders that resulted in executions on brokerage order memoranda, and failed to create and maintain brokerage order memoranda for orders that did not result in executions. The findings stated that the firm failed to report the correct trade execution time for transactions in TRACE-eligible securities to TRACE and failed to report the correct number of bonds to TRACE when the bonds had a factor other than one for transactions in TRACE-eligible securities. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning recordkeeping and TRACE trade reporting. The findings also included that, in transactions for or with customers, the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(FINRA Case #2005000167502)**

Prager, Sealy & Co., LLC (CRD #21567, San Francisco, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report information regarding transactions effected in municipal securities to the RTRS. **(FINRA Case #2007008993901)**

Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$1,000,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted a person or entity not registered as a broker-dealer and who had been barred from the securities industry to perform duties that required registration. The findings stated that the firm permitted a person who was not registered with, qualified by or acceptable to the NYSE to regularly perform the duties customarily performed by a securities lending representative; compensated alleged finders in connection with stock loan transactions when the finders had not performed any services in connection with the transactions; and transmitted transaction-based compensation to an unregistered person or entity operating as an unregistered broker-dealer.

The findings stated that the firm failed to reasonably supervise or control certain of its business activities; provide for appropriate procedures of supervision and control; and establish a separate system of follow-up and review to determine that delegated authority and responsibility were being properly exercised. The findings also included that the firm failed to make and keep accurate records reflecting its stock loan activities. **(FINRA Case #2007009525901)**

Smith Hayes Financial Services Corp. (CRD # 17059, Lincoln, Nebraska) submitted a Letter of Acceptance Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it had policies and procedures regarding private offerings, including setting up an escrow account and releasing funds from the escrow account to the issuer, but failed to adequately implement its written procedures with respect to an offering. The findings stated that the firm did not follow its procedures regarding establishing an escrow account for the offering; monitoring the activities in the account; returning funds to investors when the minimum contingency was not met and calculating whether the minimum contingency amount had been met. **(FINRA Case #2006007353802)**

TD Professional Execution, Inc. (CRD #37554, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its written supervisory procedures regarding OATS reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS and failed to transmit required information to OATS. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning OATS reporting. **(FINRA Case #2006005509101)**

Track Data Securities Corporation (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in securities, and for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that on numerous occasions, the firm accepted short sale orders in an equity security from another person, or effected a short sale in an equity security for its own account, without borrowing the security or entering into a *bona fide* arrangement to borrow the security or having reasonable grounds to believe that the security could be delivered on the date delivery is due and documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The findings also stated that the firm failed to report the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities to the TRF. The findings also included that the firm made a report available on the covered orders in national market system securities that it received for execution from any person that included incorrect information as to classification of orders and inaccurate order statistics. FINRA found that the firm submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order the destination member firm submitted due to inaccurate, incomplete or improperly formatted data. **(FINRA Case #2005001806301)**

Trustfirst, Inc. (CRD #39057, Knoxville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$14,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it served as a placement agent in a private placement offering of equity and debenture securities. The findings stated that the offering was made without registration in reliance on the exemption from registration contained in SEC Rule 506 of Regulation D, which prohibits general solicitation or advertising in connection with such offerings. The findings also stated that, in soliciting sales of the securities, the firm mailed announcements of the offering to prospective investors; only some had a pre-existing relationship with the firm or the issuer at the time of the solicitation so that the offering constituted a general solicitation. The findings also included that, in failing to comply with Regulation D requirements, the firm's sales of the unregistered securities were in contravention of Section 5 of the Securities Act of 1933. **(FINRA Case #2007007423401)**

Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it made available a report on the covered orders in national market system securities that it received for execution from any person in which the firm failed to properly classify an order and the firm published incorrect order execution information. The findings stated that the firm reported execution reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also stated that the firm failed to show the correct entry time on brokerage order memoranda and the correct execution price on a brokerage order memorandum. The findings also included that the firm failed to prepare and maintain a proprietary trading ledger reflecting firm-wide positions on a real-time basis. FINRA found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules relating to SEC Rule 606, "regular and rigorous" reviews of orders routed to and executed by other parties and trading halts. **(FINRA Case #2006005288101)**

Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$24,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation when each order was at a price that would have improved the firm's bid or offer in each security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the TRF. The findings also stated that the firm incorrectly designated last sale reports of transactions in NASDAQ securities reported to the TRF within 90 seconds of execution as "SLD". The findings also included that the firm failed to timely report information regarding transactions effected in municipal securities to the RTRS. **(FINRA Case #2006004292301)**

Individuals Barred or Suspended

Timothy Luke Allen (CRD #2348806, Registered Principal, Boca Raton, Florida)

submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Allen consented to the described sanction and to the entry of findings that he obtained and used customer funds totaling \$704,315 from a private placement offering for personal and business expenses without authorization, and did not immediately repay the funds. (FINRA Case #2006006316001)

John Douglas Audifferen (CRD #2053214, Registered Representative, Brooklyn, New York) was fined \$9,665, ordered to pay \$7,835 in restitution to a public customer and barred from association with any FINRA member in any capacity. The SEC affirmed the sanctions following appeal of a NAC decision. The sanctions were based on findings that Audifferen willfully caused his member firm to extend credit impermissibly to a public customer's cash account and willfully benefited from his firm's extension of credit to the customer. The findings stated that Audifferen personally extended credit to the customer and impermissibly shared in the profits generated in the customer's account, causing his firm to free ride in the customer's cash account in violation of Regulation T. The findings also stated that Audifferen willfully caused his firm to extend credit impermissibly in his own cash and margin accounts by paying for his securities purchases with checks that were returned for insufficient funds, thereby willfully causing his firm to violate Regulation T. The findings also included that Audifferen failed to disclose a customer complaint on his Form U4. (FINRA Case #C1020030095)

Michael Joseph Becker (CRD #4323217, Registered Principal, Farmingville, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, barred from association with any FINRA member as an equity trader, and suspended from association with any FINRA member in any capacity for 60 calendar days. Without admitting or denying the findings, Becker consented to the described sanctions and to the entry of findings that he was responsible for trading in proprietary accounts at his member firm. He traded directly with a market maker or through an electronic communications network, but settlement was handled by a clearing firm. The findings stated that while the contra parties received securities or monies due, if there was a trade break settlement of the firm's positions would be delayed until the trade break was resolved. Becker was responsible for responding to trade breaks and was reckless in his approach to the trade breaks because he repeatedly made entries on the clearing firm's systems that did not properly resolve the breaks and settle the trades. The findings also stated that while Becker's entries removed the trade break from his computer screen, they failed to result in a final settlement in his firm's account and would reappear when his new entries again failed to match the contra party's entries. The findings also included that a new clearing firm identified the unsettled trades and sought payment from Becker's firm; but when the firm did not pay, the clearing firm liquidated the unsettled positions, causing the firm to cease its business operations when it could not remit the approximately \$3 million dollars owed to the clearing firm.

The suspension in any capacity is in effect from October 20, 2008, through December 18, 2008. (FINRA Case #ELI2003041302)

Bryan Scott Behrens (CRD #1246183, Registered Principal, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Behrens consented to the described sanction and to the entry of findings that, while selling notes relating to an entity he controlled, he failed to disclose to investors that funds from new investors were being used to pay earlier investors. The findings stated that Behrens did not disclose in writing to his member firm that he was selling the notes to investors, and his member firm did not provide written approval for him to do so. The findings also stated that Behrens failed to respond to FINRA requests for information. (FINRA Case #2007011249401)

Gary Robert Black (CRD #4232375, Registered Representative, Fort Wayne, Indiana) submitted an Offer of Settlement in which he was suspended from association with any FINRA member in any capacity for two months. In light of Black's financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Black consented to the described sanction and to the entry of findings that he forged public school teachers' signatures on enrollment forms for a state retirement program and submitted the forms with the forgeries to the retirement program for processing.

The suspension in any capacity is in effect from October 6, 2008, through December 5, 2008. (FINRA Case #2007008266901)

Constance Farnsworth Bladon (CRD #728860, Registered Supervisor, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bladon consented to the described sanction and to the entry of findings that she failed to comply with FINRA requests to testify at an on-the-record interview. (FINRA Case #2007009431201)

Kerry Lane Bryan (CRD #4495856, Registered Representative, Maryville, Tennessee) submitted an Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bryan consented to the described sanction and to the entry of findings that he misappropriated at least \$100,000 from a charitable organization affiliated with his member firm by issuing checks made payable to himself or "cash" from the organization's bank account. The findings stated that Bryan's actions were taken without the organization's knowledge, authorization or consent, and he utilized the misappropriated funds for personal expenses. The findings also stated that Bryan failed to respond completely to FINRA requests for information and documents. (FINRA Case #2007007580301)

Stacey Lynn Budd (CRD #5256215, Registered Representative, Huntington Woods, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Budd consented to the described sanction and to the entry of findings that she used public customers' automatic teller machine (ATM) card to withdraw \$7,000 from their bank checking account without their permission and consent. (FINRA Case # 2007011294601)

Richard P. Buss (CRD #2178688, Registered Representative, West Bend, Wisconsin) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Buss consented to the described sanction and to the entry of findings that he instructed a public customer to sign blank checks from her money market account to purchase unspecified investments, but converted the funds totaling \$271,975 from her account to pay his credit card bills and other personal expenses without the customer's knowledge or permission. The findings stated that Buss instructed another public customer's trustee to sign checks totaling \$163,500 for unspecified investments for the customer's benefit, but used the funds to pay credit card bills. The findings also stated that Buss instructed the trustee to sign account checks totaling \$407,000, which were used to pay initial and annual insurance premiums for unrelated customers and for which Buss received \$47,000 in commissions. The findings also included that Buss failed to respond to FINRA requests for information. **(FINRA Case #2006005732801)**

Jeramie J. Crabtree (CRD #5259300, Registered Principal, Pleasant Grove, Utah) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Crabtree consented to the described sanction and to the entry of findings that he forged individuals' signatures and falsified some of the information on insurance applications to generate commissions from the transactions and to qualify for sales contests that his member firm's insurance company affiliate sponsored. The findings stated that in some instances, the individuals had not authorized Crabtree to sign the applications or to purchase life insurance on their behalf. **(FINRA Case #2008013865901)**

Lace Anne Daniels (CRD #1688213, Registered Principal, Indian Trail, North Carolina) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Daniels induced her branch office's comptroller to issue her a \$22,000 check, falsely representing that the branch manager had approved that amount as a bonus by providing an unsigned compensation agreement and falsely stating that the manager had forgotten to sign the form, thereby converting the funds to her own use without her member firm's knowledge or consent. The findings stated that Daniels accessed the branch office's payroll program and ordered the payment of \$5,527 to herself without her firm's knowledge or consent. The findings also stated that Daniels failed to respond to FINRA requests for information. **(FINRA Case #2006007089902)**

Roxanne Lynn Doty (CRD #4954811, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for 13 months. The fine is due and payable either immediately upon reassociation with a member firm following her suspension or prior to any request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. Without admitting or denying the findings, Doty consented to the described sanctions and to the entry of findings that she borrowed \$22,500 from a public customer contrary to her member firm's written procedures prohibiting its employees from borrowing funds from, or lending funds to, a public customer under any circumstances. The findings stated that Doty did not request or obtain permission

from her member firm but repaid the loan with interest. The findings also stated that Doty submitted a false statement to her firm regarding the loan although she later provided a truthful account.

The suspension in any capacity is in effect from October 6, 2008, through November 5, 2009. (FINRA Case #2007008714301)

Dena Meacham Fisher (CRD #2701287, Registered Principal, Highlands Ranch, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Fisher consented to the described sanction and to the entry of findings that she sought and received reimbursement for more than \$9,400 from her member firm to which she was not entitled, thereby misappropriating her member firm's funds for her own use. The findings stated that Fisher falsified expense reports, causing her firm's books and records to be false. (FINRA Case #2008012913001)

Roberto Giovanni Gatti (CRD #1925676, Registered Principal, Franklin Lakes, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$100,000, which includes disgorgement of commissions, and suspended from association with any FINRA member in any capacity for three months. In light of Gatti's financial status, a \$100,000 fine was imposed. The fine must be paid either immediately upon Gatti's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Gatti consented to the described sanctions and to the entry of findings that he charged unfair and excessive commissions on Treasury and fixed income trades for corporate trust customers of his member firm's bank.

The suspension in any capacity is in effect from October 6, 2008, through January 5, 2009. (FINRA Case #2008013294101)

Lee Alexander Gold (CRD #1923251, Registered Principal, Rocky Point, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 40 days. Without admitting or denying the findings, Gold consented to the described sanctions and to the entry of findings that he settled a customer complaint outside of his member firm without immediately informing his firm or obtaining its consent to do so.

The suspension in any capacity was in effect from October 6, 2008, through November 14, 2008. (FINRA Case #2006006719101)

Andrew Paul Gonchar (CRD #1659516, Registered Representative, Staten Island, New York) and Polyvios Tony Polyviou (CRD #1659532, Registered Representative, Upper Saddle River, New Jersey) were each fined \$114,022 and barred from association with any FINRA member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Gonchar and Polyviou fraudulently interpositioned a third-party account between their member firm and retail customers in convertible bond trades and charged the customers undisclosed fraudulently excessive markups.

This decision has been appealed to the SEC and the bars are in effect pending consideration of the appeal. (FINRA Case #CAF20040058)

David Wayne Gwynn (CRD #1699887, Registered Principal, Eugene, Oregon) submitted an Offer of Settlement in which he was suspended from association with any FINRA member in any capacity for 10 business days. In light of Gwynn's financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Gwynn consented to the described sanction and to the entry of findings that he exercised discretionary authority in a public customer's account without the customer's prior written authorization to exercise discretion and without his member firm's acceptance of the account as discretionary.

The suspension in any capacity was in effect from October 6, 2008, through October 17, 2008. (FINRA Case #2006006808001)

Brent Allen Hines (CRD #3242314, Registered Representative, Parker, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Hines consented to the described sanction and to the entry of findings that he failed to respond to a FINRA request for information and documents. (FINRA Case #2008014410501)

Jophlin Devon Johnson (CRD #4486919, Associated Person, Irving, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Johnson willfully failed to disclose material information on his Form U4. The findings stated that Johnson failed to respond to FINRA requests for information. (FINRA Case #2006005692701)

Legare Minott Johnson (CRD #1480395, Registered Representative, Awenda, South Carolina) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Johnson failed to respond to FINRA requests for information. (FINRA Case #2006007502601)

Cindy Lee Kontorowicz (CRD #5373828, Registered Representative, Hamilton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Kontorowicz' reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Kontorowicz consented to the described sanctions and to the entry of findings that she signed her manager's signature, without authorization or consent, on an income verification form that she submitted to a lender when applying for a personal mortgage loan.

The suspension in any capacity is in effect from October 6, 2008, through January 5, 2009. (FINRA Case #2008012473001)

Carlos Lopez III (CRD #5345944, Registered Representative, El Paso, Utah) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Lopez consented to the described sanction and to the entry of findings that he took \$398.26 in public customer bank funds and converted the funds for his personal use. The findings stated that Lopez assisted a public customer by telephone with renewal and rollover of certificate of deposit (CD) funds for which the customer mistook the amount, and acting without the customer's knowledge or consent, Lopez took the \$100 difference and used it for his own benefit or some benefit other than that of the customer. The findings also stated that Lopez, without another public customer's knowledge and consent, opened a checking account in the customer's name, used the banking center address as the mailing address for the account, and created an ATM card for access to the account and withdrew \$126.45 from the account at a non-affiliated bank for his own benefit. The findings also included that Lopez assisted a third public customer by telephone with rolling over a CD prior to maturity and advised the customer that there would be a \$171.81 penalty fee. FINRA found that Lopez renewed the CD without a penalty fee, resulting in \$171.81 less being rolled over, which Lopez used for his own benefit. **(FINRA Case # 2008013774201)**

Jordan Dean Main (CRD #4520794, Registered Representative, South Lyon, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. Without admitting or denying the findings, Main consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give written notice of his intention to participate in the proposed transactions and to receive written acknowledgement of said notice.

The suspension in any capacity is in effect from October 6, 2008, through February 5, 2009. **(FINRA Case #2006006357701)**

Carl McCaskill (CRD #1345072, Registered Representative, New York, New York) was barred from association with any FINRA member in any capacity and ordered to reimburse a public customer \$109,000, plus interest. The sanction was based on findings that McCaskill borrowed \$159,000 from a public customer in breach of his member firm's policies and procedures prohibiting borrowing money from customers without prior written approval. The findings stated that McCaskill failed to respond to requests for information from FINRA and the New York Stock Exchange, LLC. **(FINRA Case #2007009417801)**

Riley Kenneth McHugh (CRD #836722, Registered Principal, Reno, Nevada) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, McHugh consented to the described sanction and to the entry of findings that he participated in private securities transactions without prior written notice to, or prior written approval from, his member firm. The findings stated that McHugh failed to respond to FINRA requests for information and documents. **(FINRA Case #2007008143401)**

Steven Fisher Mosshart (CRD #1504071, Registered Representative, Troy, Michigan) submitted an Offer of Settlement in which he was suspended from association with any FINRA member in any capacity for one year and ordered to pay \$905,000, plus interest, in restitution to public customers. The restitution amounts are due and payable either immediately upon reassociation with a member firm following his suspension or prior to any request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. Without admitting or denying the allegations, Mosshart consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give written notice to, and receive written acknowledgement from, his member firm. The findings stated that Mosshart borrowed funds from public customers contrary to his member firm's prohibition from borrowing from customers. The findings also stated that Mosshart completed and submitted questionnaires to his firm that were false and misleading, in that he represented that he had not borrowed money from firm customers.

The suspension in any capacity is in effect from October 6, 2008, through October 5, 2009. (FINRA Case #2005001798201)

Thomas James Mulvey Jr. (CRD #1851436, Registered Representative, Lincoln, Rhode Island) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the allegations, Mulvey consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in a public customer's account, liquidating all of the customer's mutual fund shares and then investing \$75,000 in proceeds in a variable annuity. The findings stated that the customer had not given Mulvey discretionary authorization or power of attorney over the account. The findings also stated that Mulvey falsely certified on a firm form that he had obtained identification information directly from the customer and verified that the information was accurate. The findings also included that Mulvey inserted false information on the form and submitted it to his member firm, causing the firm to maintain a false record.

The suspension in any capacity is in effect from October 6, 2008, through January 5, 2009. (FINRA Case #2006007021201)

Nicholas Anthony Natale (CRD #1588810, Registered Principal, Delray Beach, Florida) was fined \$90,000 and barred from association with any FINRA member in any principal capacity. The sanctions were based on findings that Natale failed to ensure that his member firm complied with the Taping Rule requirements under NASD Rule 3010(b)(2). The findings stated that Natale failed to ensure that firm research analysts had passed the qualifying examinations before they published research reports. The findings also stated that Natale failed to file amended Forms U4 for registered representatives of the firm in response to written customer complaints the firm received. The findings also included that Natale failed to report, or to timely report, customer complaints to FINRA. (FINRA Case #E072005005401)

Ara Proudian (CRD #2488729, Registered Principal and Representative, New Rochelle, New York) was fined \$25,000, suspended from associating with any FINRA member in any capacity for one year and ordered to requalify in all capacities prior to reassociating with any FINRA member. The NAC imposed the sanctions following a call for review of an OHO decision. The sanctions were based on findings that Proudian aided and abetted a market manipulation of a stock by entering buy and sell orders for the stock at the direction of others, with the vast majority of the orders being crossed or effectively matched to permit his member firm's continued control of the market for the security. The findings stated that Proudian recklessly abdicated his duty to investigate his member firm's trading and closed his eyes to the circumstances indicative of a scheme to create the false appearance of an independent market.

The suspension in any capacity is in effect from October 6, 2008, through October 6, 2009. (FINRA Case #CMS040165/20050006311)

Guadalupe Rivera (CRD #4916520, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Rivera consented to the described sanction and to the entry of findings that, while she was employed as a licensed personal banker and registered with a member firm, she used the bank's systems to obtain information regarding a public customer and his money market account. The findings stated that, without the customer's prior knowledge or authorization, Rivera used the information to withdraw \$50,000 from the customer's account for her personal use and benefit, and failed to return any of the funds to the customer or reimburse her firm after it repaid the customer. The findings also stated that Rivera failed to fully respond to FINRA requests for documents and information. (FINRA Case #2007010853701)

Ruben Garcia Rojas (CRD #5431331, Associated Person, Tieton, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon Rojas' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Rojas consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

The suspension in any capacity is in effect from October 6, 2008, through February 5, 2009. (FINRA Case #2007010993301)

Barry Ray Stokes (CRD #2128600, Registered Representative, Dickson, Tennessee) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Stokes consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for documents and information. (FINRA Case #2006006445202)

Michael Owen Traynor (CRD #1104964, Registered Principal, Bradenton, Florida)

submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Traynor consented to the described sanction and to the entry of findings that he received a \$100,000 check from public customers to purchase life insurance policies, and, without the customers' authorization or consent, deposited the check into a corporate bank account he controlled, and withdrew and transferred funds from the account for purposes other than the customers' intentions. (FINRA Case #2007008015301)

Bruce Arthur Tucker (CRD #2369029, Registered Representative, Delray Beach, Florida)

submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Tucker consented to the described sanction and to the entry of findings that he made recommendations to public customers to open accounts with his member firm and invest in collateralized mortgage obligation (CMO) securities without having reasonable grounds for believing that his recommendations were suitable based on the customers' financial situations and needs. The findings stated that Tucker made misstatements of material fact and omitted material facts in connection with the CMO recommendations. The findings also stated that Tucker delegated the authority to another representative to utilize his discretion to select particular CMO investments for his customers, decide how much of the security his customers would buy and when, and decide how much margin borrowing would be utilized to purchase the CMOs, without obtaining written authorization from his clients and a firm principal to authorize Tucker or another representative to exercise discretion in any of the accounts. (FINRA Case #2006005546005)

Kelly Demetrius Wright (CRD #2062526, Registered Principal, Chicago, Illinois)

submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Wright consented to the described sanction and to the entry of findings that he exercised discretion in effecting stock and option transactions in public customers' accounts without the customers' prior written authorization and without his member firm's acceptance of the accounts as discretionary. The findings stated that Wright engaged in unsuitable and excessive trading strategies in customers' accounts in view of their financial situations and investment objectives. The findings also included that, in pursuing the aggressive trading strategy in the customers' accounts, Wright acted with intent to defraud or with reckless disregard for the customers' best interest in order to generate commissions. FINRA found that Wright, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices or courses of business that operated, or would operate, as a fraud or deceit upon purchasers or prospective purchasers. FINRA also found that Wright engaged in outside business activity, outside the scope of his relationship with his member firm, and without prior written notice to the firm. (FINRA Case #2005000346102)

Mary Ann Yzaguirre aka Mary Ann Vargas (CRD #1357782, Associated Person, San Antonio, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that, in her role in her member firm's cashiering department, she systematically misappropriated \$45,500 by engaging in a check kiting scheme. The findings stated that Yzaguirre deposited personal checks backed by insufficient funds into her personal firm accounts and improperly coded the checks on the firm's system so that she could have same-day access to the funds, thereby creating artificial balances in her firm accounts that caused the firm to sustain significant losses when her scheme ultimately collapsed. The findings also stated that Yzaguirre made false entries in her firm's books and records to effectuate her scheme. **(FINRA Case #2007010840401)**

Joseph Andrew Zaragoza Jr. (CRD #2417735, Registered Representative, Chicago, Illinois) was barred from association with any FINRA member in any capacity. The NAC imposed the sanctions following appeal of a hearing panel decision. The sanction was based on findings that Zaragoza engaged in excessive trading in a public customer's account that was inconsistent with the customer's investment objectives and financial situation and was thus unsuitable. The sanction was also based on findings that stated that Zaragoza exercised discretion in the customer's account without prior written authorization from the customer and written notice to his member firm and that he failed to submit pieces of email correspondence to his firm for review and approval. The NAC also found that Zaragoza engaged in outside business activities, for compensation, and failed to provide his member firm with written notice. The NAC declined to impose a sanction for this violation because of the bar imposed for the other violations. **(FINRA Case #E8A2002109804)**

Nancy Robyn Ziering (CRD # 2845746, Registered Representative, Chatham, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$60,000 (including disgorgement of \$32,720 in commissions paid to her for unsuitable transactions) and suspended from association with any FINRA member in any capacity for nine months. The fine must be paid either immediately upon Ziering's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Ziering consented to the described sanctions and to the entry of findings that she used communications with public customers, in the form of written financial plans, that contained misleading statements and omitted material information. The findings stated that Ziering failed to obtain approval from her firm to use the communications with clients and failed to arrange for the communications to be filed with FINRA. The findings also stated that Ziering recommended variable universal life (VUL) insurance policies to public customers that were not suitable based on each customer's financial situation and needs. The findings also included that Ziering dealt unfairly with these public customers in recommending the funding of VUL policies in amounts that were inconsistent with the reasonable expectation that the customers had the financial ability to meet such a commitment.

The suspension in any capacity is in effect from October 6, 2008, through July 5, 2009. **(FINRA Case #2006006364301)**

Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions where the time for appeal has not yet expired will be reported in future *FINRA Notices*.

Gerald Jamieson Kesner (CRD #2337113, Registered Representative, Lakewood, Colorado) was barred from association with any FINRA member in any capacity. Hearing costs are due and payable when, and if, Kesner seeks to return to the securities industry. The sanction was based on findings that Kesner failed to disclose material information to public customers and other investors regarding the acquisition of securities and membership interests in a company. The findings stated that Kesner's recommendations to the customers were unsuitable based on their financial situation and needs.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (FINRA Case #2005001729501)

John Michael Elias Saad (CRD #2185911, Registered Principal, Atlanta, Georgia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Saad submitted false expense reports and receipts to his member firm's parent company, resulting in \$1,144.63 payments to him, to which he was not entitled.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. (FINRA Case #2006006705601)

Complaint Filed

FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding these allegations in the complaint.

Doria Sabia-Forence (CRD #1136269, Registered Representative, Statesboro, Georgia) was named as a respondent in a FINRA complaint alleging that she completed and submitted Letters of Authorization (LOAs) directing cash transfers totaling \$80,100 from public customers' accounts to unrelated accounts, without the customers' consent or knowledge. The complaint alleges that after the transfers were completed, \$71,500 of the transferred funds were delivered to Florence in the form of checks, which she deposited into her personal bank account and used for her personal benefit. The complaint also alleges that Florence induced a public customer to give her \$30,000 by falsely representing that she would use the funds to purchase a bond for the customer's account but, instead, deposited the funds into her personal banking account and used them for her personal benefit. (FINRA Case #2007008458901)

Firms Suspended for Failure to Supply Financial Information Pursuant to NASD Rule 9552

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

One Financial Securities, Ltd.
Houston, Texas
(September 8, 2008)

Quantum Securities, Inc.
Boca Raton, Florida
(April 10, 2008 – September 22, 2008)

S&F Securities, LLC
Winter Park, Florida
(September 8, 2008)

Westor Capital Group, Inc.
Mohawk, New York
(May 9, 2008 – September 5, 2008)

Individuals Revoked for Failing to Pay Fines and/or Costs Pursuant to NASD Rule 8320

Robert Edward Grady
Melville, New York
(September 26, 2008)

William Anthony Kaso
Pembroke Pines, Florida
(September 26, 2008)

Warren Elroy Lystrup
Goodyear, Arizona
(September 9, 2008)

Bryan Edward Muller
Seaford, New York
(September 24, 2008)

Joseph Tancreti Pagano Jr.
Massapequa, New York
(September 26, 2008)

Jeffrey Scott Ramson
New York, New York
(September 23, 2008)

Individuals Barred Pursuant to NASD Rule 9552(h)

(If the bar has been vacated, the date follows the bar date.)

Stacy Noel Famagelitto
Aurora, Ohio
(September 29, 2008)

Rex Eugene Peterson
Muskogee, Oklahoma
(September 15, 2008)

Anthony Antwon Reed
Pontiac, Michigan
(September 23, 2008)

Stephen Wesley Taylor
Sneads Ferry, North Carolina
(September 23, 2008)

**Individuals Suspended Pursuant to
NASD Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Richard Steven Blumstein
Fort Lauderdale, Florida
(July 7, 2008 – September 15, 2008)

Mark Allen Butler
Chicago, Illinois
(September 29, 2008)

John Joseph Callahan Jr.
Lagrangeville, New York
(September 2, 2008)

Charles Roland Douglass Jr.
Union, South Carolina
(September 8, 2008)

John Munsuk Lee
Fort Lee, New Jersey
(September 15, 2008)

Pamela Louise Mirabella
Salem, Massachusetts
(September 29, 2008)

Denise L. Wilms
Eastpointe, Michigan
(September 2, 2008)

**Individuals Suspended Pursuant to
NASD Rule Series 9554 for Failure to
Comply with an Arbitration Award or
Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Christopher W. Becker
Marlton, New Jersey
(September 15, 2008)

Frank Richard Bell
Bradenton, Florida
(September 11, 2008)

Ernesto J. Casco
Miami, Florida
(September 11, 2008)

Thomas Anthony Gallo
Shrewsbury, New Jersey
(April 11, 2006 – September 17, 2008)

David Michael Homer
Los Gatos, California
(September 12, 2008)

Jose Rafael Mirabal
Weston, Florida
(September 11, 2008)

Gene Paul Ramos
Jersey City, New Jersey
(September 11, 2008)

David Alexander Ricca
Clifton, New Jersey
(September 11, 2008)

Joseph John Sherrick Jr.
Mount Airy, Maryland
(September 24, 2008)

Jason Scott Woessner
Boca Raton, Florida
(September 15, 2008)